

City of Hampton, VA

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov



Council Agenda

Wednesday, July 08, 2015

1:00 PM

Council Chambers, 8th Floor, City Hall

City Council

***Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Teresa V.
Schmidt, Chris Snead, Donnie R. Tuck,
George E. Wallace, Mayor***

Staff:

Mary Bunting, City Manager

Vanessa T. Valdejuli, City Attorney

Katherine K. Glass, CMC, Clerk of Council

Last Published: 7/2/2015 1:48:25 PM

CALL TO ORDER

AGENDA

1. **15-0222** Update on Safe & Clean Initiatives
2. **15-0221** Update on Youth Violence Prevention Efforts
3. **15-0230** Briefing on Dutch Dialogues
4. **15-0231** Update on Peninsula Town Center

REGIONAL ISSUES

NEW BUSINESS

CLOSED MEETING

5. **15-0224** Closed session pursuant to Virginia Code Section 2.2-3711.A.1, .3, .5, and .7 to discuss appointment(s) as listed on the agenda; to discuss the evaluation of the City Manager, the City Attorney and the Clerk of Council; to discuss or consider the acquisition of real property for a public purpose in the Coliseum Central Area where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the City Council; to discuss a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the City of Hampton; to discuss actual or probable litigation; and to consult with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

- 15-0208** to consider appointments to the Hampton Redevelopment & Housing Authority Citizen Board

CERTIFICATION

6. **15-0225** Resolution Certifying Closed Session

Contact Info:

Clerk of Council, 757-727-6315, council@hampton.gov



City of Hampton, VA

Agenda Review

File Number: 15-0222

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0222**

Request Number: **R-2015-00215**

File Type: **Briefing / Presentation /
Hearing**

Department: **City Manager**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Annette Oakley**

Phone:

Requestor: **Steve Bond**

Phone: **727-6884**

Presenter: **Steve Bond, Assistant City Manager**

Phone: **727-6884**

Title: **Update on Safe & Clean Initiatives**

Action Requested: **No Action Required**

Estimated Time: **30 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/23/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The Safe & Clean program has been in operation since July of 2013. During that time, City agencies, including HPD, Human Services, Community Development, Fire and Rescue and others, have been working in collaboration to address specific needs of targeted neighborhoods throughout the City. Some of the targeted interventions into these neighborhoods have included increased patrols and neighborhood interactions by HPD, a mobile field office using the Public Safety command vehicle at highly visible locations, increased staff interactions with residents, observing neighborhood conditions, establishment of curfew adjustments, establishment of rental inspection districts and taking direct action on problems requiring immediate attention.

The Safe & Clean Task Force continues to develop and fine tune strategies to sustain its efforts to reduce crime, improve property maintenance, increase property values, and increase the quality of life of residents within the targeted neighborhoods.

The purpose of this briefing is to update City Council and the public on actions taken and results achieved thus far, feedback received from residents, data collected and next steps of the program.



City of Hampton, VA

Agenda Review

File Number: 15-0221

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0221

Request Number: R-2015-00214

File Type: **Briefing / Presentation /
Hearing**

Department: **City Manager**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Annette Oakley**

Phone:

Requestor: **Steve Bond**

Phone: **727-6884**

Presenter: **Synethia White, Youth Violence
Prevention Manager**

Phone: **727-2730**

Title: **Update on Youth Violence Prevention Efforts**

Action Requested: **No Action Required**

Estimated Time: **10 Minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date
6/23/2015

Acting Body

Action
Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

In 2013, the City experienced a spike in homicides with 22 homicide victims reported in that year, which is nearly 2.5 times the number of homicides that occurred in 2012 and 2011. As a result, in partnership with citizens and internal and external partner agencies, the City co-hosted a community forum to gather information about youth violence concerns. After reviewing the concerns, the City compiled a list of programs that were available to combat youth violence and aid youth and families within the community.

In 2013, a group representing the City of Hampton attended Cities United to learn about how other cities with similar demographics are addressing issues related to youth violence. This group examined different models and methods being employed by other localities to address the national problem of youth violence. Youth mini grants were awarded to support organizations that provided youth groups, camps and employment readiness training for youth and teens. Additionally in 2014, a summer youth employment program was implemented by the City. Youth violence is a public health concern that the

City, in partnership with internal and external agencies, is working to address using outcomes based prevention. After examining the local data and nationally accepted models for youth violence prevention, Hampton United has also identified a need to focus on preventing violence among black males.

The purpose of this briefing is to update City Council on youth violence prevention efforts.



City of Hampton, VA

Agenda Review

File Number: 15-0230

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0230**

Request Number: **R-2015-00220**

File Type: **Briefing / Presentation /
Hearing**

Department: **Clerk of Council**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Katherine K. Glass, CMC**

Phone:

Requestor: **Katherine K. Glass**

Phone: **757-727-6315**

Presenter: **Terry O'Neill or Matt Smith,
Community Development
Department**

Phone:

Title: **Briefing on Dutch Dialogues**

Action Requested: **No action required**

Estimated Time: **15 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/29/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Dutch *Dialogues* Virginia: Life at Sea Level brought global leaders in urban water management to Hampton and Norfolk to examine the region's relationship with the water and propose solutions for the future. The event took place over 5 days from June 19– 23. It included site visits, three days of workshops, and a presentation of recommendations to city officials, participants, and the public.

Engineering, architecture, and planning experts formed three groups to consider issues from the regional to neighborhood scale, including how Hampton Roads can better address flooding and sea level rise as a region, and also site-specific options for the Newmarket Creek watershed in Hampton and Newport News and the Tidewater Drive district in Norfolk. Recommendations for Newmarket Creek focused on those that both solved flooding problems and created broad value for the two cities and their residents.



City of Hampton, VA

Agenda Review

File Number: 15-0231

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0231**

Request Number: **R-2015-00221**

File Type: **Briefing / Presentation /
Hearing**

Department: **Clerk of Council**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Katherine K. Glass, CMC**

Phone:

Requestor: **Katherine K. Glass**

Phone: **757-727-6315**

Presenter: **Leonard Sledge, Economic
Development Director**

Phone:

Title: **Update on Peninsula Town Center**

Action Requested: **No action required**

Estimated Time: **15 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/29/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The Peninsula Town Center, a \$300 million mixed use-development located in the heart of Coliseum Central, is one of the largest public-private partnerships in Virginia. The 75 acre mixed-use center features over one million square feet of fashion and specialty retail, restaurant and dining; 115,000 square feet of class A office space; 158 residential apartments; structured parking, and 10 acres of green space including two green roofs and two public parks. The Peninsula Town Center is an economic generator for the Hampton Roads region providing 2,400 jobs and attracting approximately 14,000 visitors a day.

The Tabani Group, Inc. purchased the Peninsula Town Center in October 2014. Since then the company has attracted several new retailers (including restaurants) to the center. In addition, the Tabani group has enhanced the visitor experience at the Peninsula Town Center through programming events, adding amenities, and making physical improvements that enable the center to forward as a premier destination in Hampton Roads. During his presentation Mr. Tabani will update City Council on the recent successes

of the Peninsula Town Center.



City of Hampton, VA

Agenda Review

File Number: 15-0224

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0224

Request Number: R-2015-00204

File Type: Closed Session Motion

Department: Clerk of Council

Introduced: 7/8/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Katherine K. Glass, CMC

Phone:

Requestor: Katherine K. Glass

Phone: 757-727-6315

Presenter: N/A

Phone:

Title: Closed session pursuant to Virginia Code Section 2.2-3711.A.1, .3, .5, and .7 to discuss appointment(s) as listed on the agenda; to discuss the evaluation of the City Manager, the City Attorney and the Clerk of Council; to discuss or consider the acquisition of real property for a public purpose in the Coliseum Central Area where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the City Council; to discuss a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the City of Hampton; to discuss actual or probable litigation; and to consult with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

Action Requested: Convene closed session

Estimated Time: 5 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:



City of Hampton, VA

Agenda Review

File Number: 15-0208

22 Lincoln Street
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www.hampton.gov

File Number: **15-0208**

Request Number: **R-2015-00170**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **6/10/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **No Action Required**

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider appointments to the Hampton Redevelopment & Housing Authority Citizen Board**

Action Requested: **to dicuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/10/2015	Evening Session	Deferred (7/8/2015)
	Ayes: 7 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Teresa V. Schmidt, Chris Snead, Donnie R. Tuck, George E. Wallace	
	Nays: 0	
	Abstain: 0	
	Out: 0	
6/10/2015	Afternoon Session	No Action Required
6/4/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The first full terms of Walt Credle and Steve Brown will conclude on June 30, 2015. They are both eligible for reappointment to a second term which will expire on June 30, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.



City of Hampton, VA

Agenda Review

File Number: 15-0225

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0225**

Request Number: **R-2015-00205**

File Type: **Closed Session Certification**

Department: **Clerk of Council**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Katherine K. Glass, CMC**

Phone:

Requestor: **Katherine K. Glass**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **Resolution Certifying Closed Session**

Action Requested: **Adopt resolution**

Estimated Time: **5 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/23/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

LEGISLATION TEXT:

WHEREAS, the City Council of the City of Hampton, Virginia, has convened a closed session on this date pursuant to an affirmative recorded vote made in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712D of the Code of Virginia requires a certification by the City Council of the City of Hampton, Virginia, that such closed meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton, Virginia, hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed session to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the city council of the city of Hampton, Virginia.

City of Hampton, VA

22 Lincoln Street
Hampton, VA 23669
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Council Agenda

Wednesday, July 08, 2015

6:30 PM

Council Chambers, 8th Floor, City Hall

City Council

***Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Teresa V.
Schmidt, Chris Snead, Donnie R. Tuck,
George E. Wallace, Mayor***

Staff:

Mary Bunting, City Manager

Vanessa T. Valdejuli, City Attorney

Katherine K. Glass, CMC, Clerk of Council

Last Published: 7/2/2015 1:48:32 PM

WELCOME TO THE HAMPTON CITY COUNCIL MEETING

Because of the large number of matters that need consideration, the City Council has established a meeting format and certain guidelines for citizen participation. These help ensure that everyone who wishes to speak can do so, and that the Council can benefit from hearing as many different people as possible in the shortest time. From time to time, It may be in the public's interest to change the format and guidelines, and the Council can do so at its discretion without prior notice.

THE ORDER OF BUSINESS

The Council generally conducts meetings in the following order:

- (1) Call to Order
- (2) Ceremonial Matters
- (3) Consent Agenda
- (4) Regular Business Agenda
- (5) Miscellaneous New Business
- (6) Adjournment

Agenda items are taken up one at a time in the order in which they are listed. Matters on the consent agenda are routine and are adopted by one motion without separate discussion. However, items can be moved from the consent agenda to the regular agenda upon request by a citizen or a member of the Council. Keep in mind that the agenda is for the convenience of the public and the Council, and that it can be altered by the Council at any time without prior notice when the Council considers it in the public's interest to do so.

CITIZENS ARE INVITED TO PARTICIPATE

The City Council has adopted a three (3) minute time limit policy for individuals desiring to address issues before this body. If you wish to address the City Council, please sign in before the meeting on the sign-up sheet located in the rear of Council Chambers. Please include your name and the subject on which you wish to speak, including the docket number if it is an item on the agenda. If you wish to address Council on a non-agenda item, the permission of Council is necessary.

If you are with a group of people, you may want to have a spokesman or two present your position to the Council and have others in agreement recognized by standing. The Council will always try to hear everyone who wishes to speak on a subject, but sometimes discussion has to be limited due to time. If the previous speaker has stated your position, you may make that known by reference (for example, "I agree with the position stated by Mr. Jones and have nothing further to add"). Repetition of positions by more than one speaker often uses more time than necessary.

Speakers are generally limited to one appearance, although Council can allow exceptions at its discretion. If possible, you should speak from prepared remarks to the subject under discussion. Irrelevant comments use others' time and your own and detract from your statements on the matter being considered.

Meetings of the Council are formal proceedings, and all comments are recorded on tape and by stenographer. For that reason, you are requested not to speak from your seat or out of turn. When you are called by the presiding officer, please follow these steps:

- (1) Come forward to the speaker's podium.
- (2) State your name and address
- (3) State your conclusion and give facts and other data to back it up.
- (4) If you represent a group or organization, ask the others to rise and be recognized.
- (5) If you have a written statement, give it and other supportive material to the Clerk for the record.

The above guidelines are intended to encourage the greatest possible participation by citizens at Council meetings. They can be modified at any time by the Council at its discretion and without prior notice.

Thank you for taking your time to participate in the Council meeting. Good government depends on the interest and involvement of you and your fellow citizens. We invite you to return.

CALL TO ORDER/ROLL CALL

INVOCATION - Councilman Will Moffett

PLEDGE OF ALLEGIANCE TO FLAG

MAYOR'S COMMENTS

CONSENT AGENDA

Consent Items

1. **15-0188** Resolution to accept and appropriate 2016 Fire Programs Aid to Localities funds from the Commonwealth of Virginia--Department of Fire Programs.
2. **15-0214** Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2015-2016 Early Intervention Services for Infants and Toddlers with Disabilities and their Families Contract Amendment, Part C of the Individual with Disabilities Education Act
3. **15-0227** Resolution Approving the City of Hampton, Virginia's Participation and Appropriation in the FY2016 Virginia Homeless Solutions Program Grant through the Hampton Department of Human Services from the Virginia Department of Housing and Community Development
4. **15-0228** Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2016 Virginia Sexual and Domestic Violence Victims Fund Program through the Hampton Commonwealth's Attorney's Office from the Virginia Department of Criminal Justice Services
5. **15-0229** Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2015-2016 Hampton Adult Drug Treatment Court Grant Program Funding through the Hampton-Newport News Community Services Board from the Supreme Court of Virginia
6. **15-0213** Resolution Requesting Approval to Exceed Contract Value to the Bridge Improvements on Cunningham Drive and Commander Shepard Boulevard Project
7. **15-0217** Resolution Determining Bogey's Grille, L.L.C., To Be The Only Source Practicably Available From Which To Procure Food Concession Services At City-Owned Golf Courses And Authorizing The Negotiation And Execution Of A Contract With Bogey's Grille, L.L.C., As "Sole Source"

8. **15-0223** Approval of the minutes from the afternoon session, Spotlight on Citizens, and evening session from May 27, 2015, and the afternoon and evening meeting of June 10, 2015.

PRESENTATIONS, PROCLAMATIONS, AWARDS

PUBLIC HEARINGS

Rezoning

9. **15-0220** Ordinance To Amend And Re-Enact Articles I and II of Chapter 13 of The Zoning Ordinance Of The City Of Hampton, Virginia Entitled "Board of Zoning Appeals" By Amending Sections 13-1 through 13-17 Pertaining To The Composition, Powers, and Duties of the Board of Zoning Appeals and Variances, Special Exceptions, and Appeals of the Zoning Administrator.

Use Permit

10. **15-0219** Use Permit Application No. 15-00008: by Kuang Chu Peng DBA Sushi Hampton LLC for live entertainment inside and outside Sushi King restaurant at 5101 Kilgore Avenue [LRSN 13002022].
11. **15-0218** Use Permit Application No. 15-00005: by Rachael Wright on behalf of Westview Lakes Homeowners Association, Inc. for an active park/playground at Westview Dr. [LRSN 5000487].

Ordinances

12. **15-0215** Ordinance Approving the Vacation of a Portion of Boxwood Point Road Comprising 3,797 Square Feet (0.087 Acre), More or Less, to Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust, Dated January 16, 1991

Resolutions

13. **15-0216** Resolution Authorizing the Transfer from the City of Hampton to the Hampton Redevelopment and Housing Authority One Vacant Parcel in the Downtown Area, known as 32 E. Queens Way, LRSN: 2002883.

GENERAL ITEMS

Appointments

14. **15-0208** to consider appointments to the Hampton Redevelopment & Housing Authority Citizen Board

REPORTS BY CITY MANAGER, CITY COUNCIL, STAFF, COMMITTEES

MISCELLANEOUS NEW BUSINESS

PUBLIC COMMENT

ADJOURNMENT

Contact Info:

Clerk of Council, 757-727-6315, council@hampton.gov



City of Hampton, VA

Agenda Review

File Number: 15-0188

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0188

Request Number: R-2015-00184

File Type: Resolution - Grant

Department: Fire

Introduced: 6/10/2015

Date of Final Action:

Enactment Number:

Effective: 6/10/2015

Status: Received By Clerk's Office

Created By: Chris Gallagher

Phone:

Requestor: Fire Chief David Layman

Phone: 727-6448

Presenter:

Phone:

Title: Resolution to accept and appropriate 2016 Fire Programs Aid to Localities funds from the Commonwealth of Virginia--Department of Fire Programs.

Action Requested: Accept and appropriate aid to localities funds for FY16

Estimated Time: 20 min

Indicators: Income

Advertised:

Fiscal Notes:

Attachments: Estimated Allocation for FY16 Fire Programs ATL Funds

Date	Acting Body	Action
6/1/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Section 38.1-44 of the Code of Virginia establishes an Aid to Localities fund administered by The Virginia Department of Fire Programs. The code states that cities, counties, and towns providing fire service operations receive allocations annually from the aid to localities funds. The amount of funding is figured on the locality's population. These funds are used to support training for out-of-state schooling and conferences, maintenance and programs of the fire training center, support for fire prevention education, support of fire inspectors and investigators, purchases of fire equipment and salaries for WAE training instructors.

LEGISLATION TEXT:

WHEREAS, Section 38.1-44.0 of the Code of Virginia establishes a Fire Programs Fund; and

WHEREAS, cities, counties, and towns, providing fire service operations receive allocations annually from the aid to localities funds; and

WHEREAS, these funds are used to support training for out-of-state schooling and conferences, maintenance and programs of the fire training center, support for fire prevention education, support of fire inspectors and investigators, purchases of fire equipment and salaries for WAE training instructors,

NOW, THEREFORE, BE IT RESOLVED: the 2016 Aid to Localities Fire Program Funds in the amount of \$412,761 be accepted and appropriated.

Commonwealth of Virginia
Department of Fire Programs

Aid to Localities (ATL)

(estimated)

Virginia Total		324	8,001,024	\$ 25,151,640	
Description	FIN	FIPS Code	Population ²	FY 2015 Allocation ESTIMATED 06/15/14	INITIAL PAYMENT (90%)
Tappahannock		464	2,375	\$ 10,000	\$ 9,000
Tazewell		465	4,627	\$ 13,896	\$ 12,507
The Plains		466	217	\$ 10,000	\$ 9,000
Timberville		467	2,522	\$ 10,000	\$ 9,000
Toms Brook		468	258	\$ 10,000	\$ 9,000
Troutdale		469	178	\$ 10,000	\$ 9,000
Troutville		470	431	\$ 10,000	\$ 9,000
Urbanna		471	476	\$ 10,000	\$ 9,000
Victoria		472	1,725	\$ 10,000	\$ 9,000
Vienna		473	15,687	\$ 47,113	\$ 42,401
Vinton		474	8,098	\$ 24,321	\$ 21,889
Virginia		475	154	\$ 10,000	\$ 9,000
Wachapreague		476	232	\$ 10,000	\$ 9,000
Wakefield		477	927	\$ 10,000	\$ 9,000
Warrenton		478	9,611	\$ 28,865	\$ 25,978
Warsaw		479	1,512	\$ 10,000	\$ 9,000
Washington		480	135	\$ 10,000	\$ 9,000
Waverly		481	2,149	\$ 10,000	\$ 9,000
Weber City		482	1,327	\$ 10,000	\$ -
West Point		483	3,306	\$ 10,000	\$ 9,000
White Stone		484	352	\$ 10,000	\$ -
Windsor		485	2,626	\$ 10,000	\$ 9,000
Wise		486	3,286	\$ 10,000	\$ 9,000
Woodstock		487	5,097	\$ 15,308	\$ 13,777
Wytheville		488	8,211	\$ 24,650	\$ 22,194
Clinchco		490	337	\$ 10,000	\$ 9,000
South Boston		492	8,142	\$ 24,453	\$ 22,008
Clifton Forge		493	3,804	\$ 11,635	\$ 10,498
Bedford		494	6,222	\$ 18,687	\$ -
Total Towns		191	507,796	\$ 2,609,178	\$ 2,017,897
(a)					
Alexandria		510	139,966	\$ 420,360	\$ 378,324
Bristol		520	17,835	\$ 53,564	\$ 48,207
Buena Vista		530	6,650	\$ 20,000	\$ 18,000
Charlottesville		540	43,475	\$ 130,568	\$ 117,512
Chesapeake		550	222,209	\$ 667,360	\$ -
Colonial Heights		570	17,411	\$ 52,290	\$ 47,061
Covington		580	5,961	\$ 20,000	\$ 18,000
Danville		590	43,055	\$ 129,307	\$ 116,376
Emporia		595	5,927	\$ 20,000	\$ 18,000
Fairfax		600	22,565	\$ 67,769	\$ 60,992
Falls Church		610	12,332	\$ 37,037	\$ -
Franklin		620	8,582	\$ 25,774	\$ 23,197
Fredericksburg		630	24,286	\$ 72,938	\$ 65,644
Galax		640	7,042	\$ 21,149	\$ -
Hampton		650	137,436	\$ 412,761	\$ 371,485
Harrisonburg		660	48,914	\$ 146,903	\$ 132,213
Hopewell		670	22,591	\$ 67,848	\$ 61,063
Lexington		678	7,042	\$ 21,149	\$ 19,034
Lynchburg		680	75,568	\$ 228,953	\$ 204,258
Manassas		683	37,821	\$ 113,588	\$ 102,229
Manassas Park		685	14,273	\$ 42,866	\$ 38,579



City of Hampton, VA

Agenda Review

File Number: 15-0214

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0214

Request Number: R-2015-00207

File Type: Resolution - Grant

Department: Budget/Finance

Introduced: 7/8/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Marcie Dunn

Phone:

Requestor: Cynthia Burgess

Phone: 727-2716

Presenter: N/A, N/A

Phone: N/A

Title: Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2015-2016 Early Intervention Services for Infants and Toddlers with Disabilities and their Families Contract Amendment, Part C of the Individual with Disabilities Education Act

Action Requested: Approve Resolution

Estimated Time: 1 Min

Indicators:

Advertised:

Fiscal Notes: \$642,906 - \$237,520 in Federal Funds and \$405,386 in State Funds

Attachments:

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The goal of the Infant and Toddler Connection of Hampton-Newport News (formerly the Hampton/Newport News Interagency Coordinating Council) is the development of a system of comprehensive services to children with developmental delays, diagnosed disabling conditions or atypical development, from birth through two years of age, in the cities of Hampton and Newport News. This program is vital to families because between birth and three years of age are developing sensory pathways for learning at a greater rate than any other time in life. Quite simply, children with disabilities receiving needed therapeutic and educational services at this young age have a window of opportunity to overcome or minimize their disability or risk of disability. The Infant and Toddler Council is comprised of parents; service providers, agency representatives and individuals involved with personnel preparations.

For the past thirteen years, the City of Hampton has received the Early Intervention Services for Infants and Toddlers with Disabilities and their Families award on behalf of the Infant and Toddler Connection of Hampton-Newport News.

LEGISLATION TEXT:

WHEREAS, the Department of Behavioral Health and Developmental services (DBHDS) has awarded the City of Hampton, Part C funds on behalf of the Infant and Toddler Connection of Hampton Newport News (formerly named the Hampton-Newport News Interagency Coordinating Council) in the amount of \$237,520 in federal funds and \$405,386 in state funds for a total award of \$642,906; and

WHEREAS, the grant period covers July 1, 2015 through June 30, 2016; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hampton, Virginia accepts and appropriates the Early Intervention Services for Infants and Toddlers with Disabilities and Their Families contract amendment in the amount of \$642,906 and any related supplemental funding by the Department of Behavioral Health and Developmental Services in accordance with the contract.

BE IT FURTHER RESOLVED, that the City authorizes the City Manager to take the necessary steps to implement this grant award.



City of Hampton, VA

Agenda Review

File Number: 15-0227

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0227**

Request Number: **R-2015-00217**

File Type: **Resolution - Grant**

Department: **Budget/Finance**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Marcie Dunn**

Phone:

Requestor: **Mary Holup**

Phone: **727-1859**

Presenter: **N/A, N/A**

Phone: **N/A**

Title: **Resolution Approving the City of Hampton, Virginia's Participation and Appropriation in the FY2016 Virginia Homeless Solutions Program Grant through the Hampton Department of Human Services from the Virginia Department of Housing and Community Development**

Action Requested: **Adopt Resolution**

Estimated Time: **1 min**

Indicators:

Advertised:

Fiscal Notes: \$1,001,420 - \$1,001,420 in State Funds

Attachments:

Date	Acting Body	Action
6/29/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Hampton Department of Social Services serves as the lead agency for the Greater Virginia Peninsula Homelessness Consortium and the fiscal agency for the Virginia Peninsula Collaborative. The Virginia Peninsula Collaborative (VPC) is a united effort between seven service provider agencies, including the Hampton Department of Human Services (as the lead and fiscal agency), to provide shelter operations, rapid re-housing, prevention, coordinated/central intake and Continuum of Care (COC) planning across the region. The VPC remains committed to ensuring the ease and accessibility of services for those experiencing homelessness or at risk of homelessness across the COC's geographical area, which includes: Hampton, Newport News, Williamsburg, James City County, York County and Poquoson. The partnerships that make up the VPC exist between the Hampton Department of Human Services (HDHS), James City County Office of Housing and Community Development (JCC OHCD), Hampton Newport News Community Services Board (HNNCSB), The Salvation Army of Greater Williamsburg, Menchville

House, Avalon, and Transitions along with a host of GVPHC member agencies throughout the community. Emulated after the GVPHC's successful collaborative efforts and administration of Homeless Prevention and Rapid Re-housing Program (HPRP) funds, the Hampton Department of Human Services will be the grantee and will initiate Memorandums of Understandings (MOU) between all of the identified partners to ensure clarity and accountability. Partners will continue to meet monthly to discuss grant administration, system delivery and leveraging of funds. Collectively the GVPHC is submitting a request for the following proposed activities:

Shelter - 350 Households

Rapid Re-housing - 200 Households

Rapid Re-housing veterans - 50

Prevention – 190 Households

Centralized/Coordinated Assessment 2,000 families/individuals

LEGISLATION TEXT:

WHEREAS, the Virginia Department of Housing and Community Development has awarded the Virginia Homeless Solutions Program grant to the City of Hampton in the amount of \$1,001,420 in State funds; and

WHEREAS, the grant award covers the period July 1, 2015 through June 30, 2016;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton accepts and appropriates the VHSP in the amount of \$1,001,420 and any related supplemental funding by the Virginia Department of Housing and Community Development.

BE IT RESOLVED that the City Council authorizes the City Manager or his/her designee to make the necessary steps to implement this grant award.



City of Hampton, VA

Agenda Review

File Number: 15-0228

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0228

Request Number: R-2015-00218

File Type: Resolution - Grant

Department: Budget/Finance

Introduced: 7/8/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Marcie Dunn

Phone:

Requestor: Karla Reaves

Phone: 726-6978

Presenter: N/A, N/A

Phone: N/A

Title: Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2016 Virginia Sexual and Domestic Violence Victims Fund Program through the Hampton Commonwealth's Attorney's Office from the Virginia Department of Criminal Justice Services

Action Requested: Adopt Resolution

Estimated Time: 1 min

Indicators:

Advertised:

Fiscal Notes: \$88,500 - \$45,000 in federal funds and \$43,500 City Match

Attachments:

Date	Acting Body	Action
6/29/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The Virginia Sexual and Domestic Violence Victims Fund provides funding specifically for the prosecution of crimes of violence against women and sexual assaults against men, women, and children. The types of offenses prosecuted include the following: Violation of Protective Orders, Assault and Battery against a Family or Household Member, Rape, Sodomy, Object Sexual Penetration, Aggravated Sexual Battery and Sexual Battery. The prosecutor works closely with the detectives of the Hampton Police Division who are assigned to investigate these types of cases as well as other professionals such as SANE nurses from both the Hampton's Sentara Hospital as well as Riverside Regional Medical Center.

LEGISLATION TEXT:

WHEREAS, the Virginia Department of Criminal Justice Services has awarded the Virginia Sexual and Domestic Violence Victims Fund grant to the City of Hampton in the amount of \$45,000 in federal funds and \$43,500 in cash contribution match for a total award of \$88,500.

WHEREAS, the grant period is July 1, 2015, through June 30, 2016.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton accepts and appropriates the grant award for the Virginia Sexual and Domestic Violence Victims Fund in the amount of \$88,500, and any supplemental funding awarded by the Virginia Department of Criminal Justice Services in accordance with the grant agreement.

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager, or his designee, to take the necessary steps to implement this grant award.



City of Hampton, VA

Agenda Review

File Number: 15-0229

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0229**

Request Number: **R-2015-00219**

File Type: **Resolution - Grant**

Department: **Budget/Finance**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Marcie Dunn**

Phone:

Requestor: **Sherry Glasgow**

Phone: **224-2378**

Presenter: **N/A, N/A**

Phone: **N/A**

Title: **Resolution Approving the City of Hampton, Virginia's Participation and Appropriation of the 2015-2016 Hampton Adult Drug Treatment Court Grant Program Funding through the Hampton-Newport News Community Services Board from the Supreme Court of Virginia**

Action Requested: **Adopt Resolution**

Estimated Time: **1 min**

Indicators:

Advertised:

Fiscal Notes: \$165,000 -

Attachments:

Date	Acting Body	Action
6/29/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The Supreme Court of Virginia's Hampton Adult Drug Treatment Court Grant authorizes the City of Hampton to draw down funds to help administer the Hampton Adult Drug Treatment Court that is maintained and facilitated by the Hampton-Newport News Criminal Justice Agency. The Hampton-Newport News Criminal Justice Agency application was approved for the payment in the amount of \$165,000, with the City of Hampton as project administrator.

LEGISLATION TEXT:

WHEREAS, the Supreme Court of Virginia has awarded the Hampton Adult Drug Treatment Court Grant to the City of Hampton on behalf of the Hampton-Newport News Community Services Board for the reimbursement of meeting the requirements of the grant in the amount of \$165,000 in Federal and State funds; and,

WHEREAS, the grant award covers the period July 1, 2015 through June 30, 2016; and,

WHEREAS, the City of Hampton will draw down the funds to reimburse the Hampton-Newport News Community Services Board for maintaining, facilitating, and completing the designated grant reports to the Supreme Court of Virginia, as the reports are submitted and the City if invoiced; and,

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hampton accepts and appropriates the Hampton Adult Drug Treatment Court Grant award in the amount of \$165,000 and any related supplemental funding made by the Supreme Court of Virginia in accordance with the grant agreement;

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager, or his designee, to take the necessary steps to implement this grant award.



City of Hampton, VA

Agenda Review

File Number: 15-0213

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0213

Request Number: R-2015-00206

File Type: Resolution

Department: Public Works, Administration

Introduced: 7/8/2015

Date of Final Action:

Enactment Number:

Effective: 7/8/2015

Status: Received By Clerk's Office

Created By: Crystal Craig

Phone:

Requestor: Lynn Allsbrook

Phone: 726-2930

Presenter: Lynn Allsbrook, Deputy
Director/City Engineer

Phone: 726-2930

Title: Resolution Requesting Approval to Exceed Contract Value to the Bridge Improvements
on Cunningham Drive and Commander Shepard Boulevard Project

Action Requested: Approve Resolution

Estimated Time: N/A

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

M.D. Miller Co. Inc./The Marksmen Co. was awarded the contract for maintenance on the Cunningham Drive and Commander Shepard Boulevard bridges in the amount of \$321,664.00 and construction began in April, 2015. After the repairs began it was discovered that there were significantly more areas of the bridge decks that required more patchwork repairs than the planned contract quantity and the replacement of a bad expansion joint. The bridges were originally constructed in 1974 and this is the first major repairs to the bridge decks since initial construction. Also, work is being added to the contract for the installation of the letters ("HAMPTON") on the new pedestrian fences that are being installed as part of the existing contract. These cost overruns will exceed the original contract amount by more than 25 percent and the Department of Public Works requests Council to authorize a contract change order up to \$175,000 for the additional deck patching and letters. Funds are available for the additional work.

LEGISLATION TEXT:

RESOLUTION

WHEREAS, in accordance with Section 2-336 of the City Code, Council approval is required for contract change orders exceeding 25 percent of the original contract value;

WHEREAS, on or about October 20, 2014, M.D. Miller Co. Inc./The Marksmen Co. was awarded the contract for maintenance on the Cunningham Drive and Commander Shepard Boulevard bridges in the amount of \$321,664.00 (the "Project");

WHEREAS, Project construction began around April, 2015;

WHEREAS, unforeseen conditions have required more patchwork on the Cunningham Drive bridge decks than originally planned, replacement of a bad expansion joint, and the addition of letters on the new pedestrian fence;

WHEREAS, the cost overruns will exceed the original contract amount by more than 25 percent; and

WHEREAS, the Department of Public Works requests Council to authorize a contract change order up to \$175,000.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA: that a contact change order on the project be authorized up to \$175,000.



City of Hampton, VA

Agenda Review

File Number: 15-0217

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0217**

Request Number: **R-2015-00210**

File Type: **Resolution**

Department: **City Attorney**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Lendora Dale**

Phone:

Requestor:

Phone:

Presenter: **Jim Wilson, Director, Parks & Recreation**

Phone: **727-6474**

Title: **Resolution Determining Bogey's Grille, L.L.C., To Be The Only Source Practicably Available From Which To Procure Food Concession Services At City-Owned Golf Courses And Authorizing The Negotiation And Execution Of A Contract With Bogey's Grille, L.L.C., As "Sole Source"**

Action Requested: **Approve the resolution**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The Department of Parks and Recreation wishes to amend its existing Agreement with Bogey's Grill, L.L.C., to be the exclusive provider for food services at both the Woodlands Golf Course and the Hamptons Golf Course.

LEGISLATION TEXT:

RESOLUTION

WHEREAS, Hampton City Council recognizes the public interest in providing through its Department of Parks and Recreation the most efficient means reasonably available and affordable to provide food concession services at both City-Owned Golf Courses;

WHEREAS, Bogey's Grille, L.L.C., ("Bogey's") is the exclusive provider for food services at The Woodlands Golf Course, 9 Woodland Road and which the city desires to extend the current contract to include The Hamptons Golf Course, 320 Butler Farm Road; and

WHEREAS, the price at which Bogey's has offered for the premises in which is to be used only for the retail sale of food, beverages and sundry items over the counter or by vending machines in the concession area has been determined to be fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Hampton, Virginia as follows:

1. That the contract for procuring food concessions described above may be negotiated and awarded to Bogey's as a "sole source" without competitive sealed bidding or competitive negotiation as set forth in Virginia Code Section 2.2-4303.E;
2. That the City Manager or his authorized designee is hereby authorized to negotiate and execute a purchase contract with Bogey's; and
3. That the notice awarding the contract to Bogey's shall be posted in a public place pursuant to Virginia Code Section 2.2-4303.E.



City of Hampton, VA

Agenda Review

File Number: 15-0223

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0223**

Request Number: **R-2015-00203**

File Type: **Minutes**

Department: **Clerk of Council**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Katherine K. Glass, CMC**

Phone:

Requestor: **Katherine K. Glass**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **Approval of the minutes from the afternoon session, Spotlight on Citizens, and evening session from May 27, 2015, and the afternoon and evening meeting of June 10, 2015.**

Action Requested: **Approve minutes.**

Estimated Time: **5 minutes.**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/23/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:



City of Hampton, VA

Agenda Review

File Number: 15-0220

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0220

Request Number: R-2015-00213

File Type: Ordinance - Zoning Text

Department: Planning

Introduced: 7/8/2015

Date of Final Action:

Enactment Number:

Effective:

Status: Received By Clerk's Office

Created By: Tolu Ibikunle

Phone:

Requestor:

Phone:

Presenter: Steve Shapiro, Zoning Administrator

Phone: 757-727-6246

Title: Ordinance To Amend And Re-Enact Articles I and II of Chapter 13 of The Zoning Ordinance Of The City Of Hampton, Virginia Entitled "Board of Zoning Appeals" By Amending Sections 13-1 through 13-17 Pertaining To The Composition, Powers, and Duties of the Board of Zoning Appeals and Variances, Special Exceptions, and Appeals of the Zoning Administrator.

Action Requested: Approval of the ordinance.

Estimated Time: 10 minutes

Indicators:

Advertised:

Fiscal Notes:

Attachments: PC Resolution
2015 Acts of Assembly - HB 1849
Red lines

Date	Acting Body	Action
6/23/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

This is a housekeeping amendment necessary to bring the zoning ordinance into compliance with changes to state law that become effective July 1, 2015.

In its 2015 session, by adoption of House Bill 1849, the Virginia General Assembly amended several sections of the Code of Virginia regarding the powers and duties of the Board of Zoning Appeals (BZA). The bill included both substantive and procedural changes, which are summarized below.

Procedural Changes:

§ **Limits “ex parte” (one party) discussions.** BZA members cannot discuss the facts or law of a case with City staff or the applicant once the case is filed.

§ **Requires sharing of materials of a case.** City staff must share all the materials given to the BZA with the applicant within 3 days at no cost. Any additional documents or materials requested by the applicant will be treated as a routine Freedom of Information Act (FOIA) request.

§ **Requires equal time for presentations to the BZA.** Applicants must receive the same amount of time as City staff to present their argument to BZA.

Substantive Changes:

§ **Clarifies standard of review for Zoning Administrator appeals.** Official determinations of the Zoning Administrator, which may be appealed to the BZA for review, will have a presumption of correctness that the applicant must rebut by a preponderance of the evidence.

§ **Lowers the standard for the BZA to grant a variance.** Under existing law, applicants must prove that application of the zoning ordinance would result in an undue hardship to the applicant based on the physical condition of the property. Under the amended language, an applicant will need only prove that application of the ordinance would “unreasonably restrict the utilization of the property.” In addition to adding other criteria, the new law preserves the existing elements needed for a variance.

Approval of this amendment would bring the zoning ordinance into conformance with these changes and would also make general housekeeping and organizational changes to the chapter so that it is logically consistent. The Planning Commission recommends approval.

DATES ADVERTISED: Planning Commission - May 21 and 28, 2015
City Council - June 25, 2015 and July 2, 2015

LEGISLATION TEXT:

WHEREAS, the public necessity, convenience, general welfare, and good zoning practice so require;

BE IT ORDAINED by the Council of the City of Hampton, Virginia that Sections 13-1 through 13-7 of Chapter 13 of the Zoning Ordinance of the City of Hampton, Virginia, be amended and re-enacted as follows:

CHAPTER 13 – BOARD OF ZONING APPEALS

ARTICLE 1 – COMPOSITION, POWERS, AND DUTIES

Sec. 13-1. - Creation, appointment, term, etc.

- (1) The board of zoning appeals (“board”) for the City of Hampton is currently existing under authority of prior law and Virginia Code § 15.2-2308 and is hereby continued in existence.
- (2) **Membership.** The board shall consist of five (5) residents of the City of Hampton appointed by the circuit court.

- (3) **Alternates.** The circuit court shall appoint at least one (1) but not more than three (3) alternates to the board. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member, when he knows he will be absent from or will have to abstain from any application at a meeting, shall notify the chairman twenty-four (24) hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.
- (4) **Qualifications.** Members of the board shall hold no other public office in the city except that one (1) may be a member of the planning commission.
- (5) **Terms.** The terms of office of board members shall be for five (5) years, except that original appointments shall be made for such terms that the term of one member shall expire each year.
- (6) **Vacancies.** The secretary of the board shall notify the circuit court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies.
- (7) **Removal.** Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court, after a hearing held after at least fifteen (15) days' notice.

Sec. 13-2. - Officers.

The board shall elect from its own membership a chairman and vice-chairman who shall serve annual terms as such, and may succeed themselves. The board shall appoint a secretary who shall not be a member of the board or an alternate member. It shall be the secretary's duty to keep the minutes and other records of the actions and deliberations of the board and to perform such other ministerial duties as the board shall direct.

Sec. 13-3. – Quorum and voting.

For the conduct of any hearing and taking of any action, a quorum shall be not less than a majority of all members of the board. The concurring vote of a least three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance.

Sec. 13-4. - Procedures and records.

The board may make, alter, and rescind rules and forms for its procedures, consistent with ordinances of the city and general laws of the Commonwealth.

The board shall keep a full public record of its proceedings, including the recorded vote of each member upon each question, and shall submit a report of its activities to the council at least once each year.

Sec. 13-5. - Compensation.

Members of the board shall receive such compensation as may be established by the city council.

Sec. 13-6. - Meetings.

- (1) The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting pursuant to Virginia Code § 15.2-2309(8). Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.
- (2) The chairman with the concurrence of two (2) other members may call for special meetings. The time, date and location of any special meeting shall be communicated to the members and the press as promptly as possible.
- (3) The chairman, or in his absence the vice-chairman, may administer oaths and compel attendance of witnesses.
- (4) All meetings of the board shall be open to the public.

Sec. 13-7. – Ex Parte communications, case materials, and proceedings.

The following applies to all cases brought before the board except for applications for special exceptions:

- (1) The non-legal staff of the city may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case.
- (2) The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case.
- (3) If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.
- (4) Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.
- (5) Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

Sec. 13-8. - Powers and duties.

The board shall have the following powers and duties:

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by the zoning administrator or other administrative officer in the administration or enforcement of the zoning ordinance as set forth in Article II.
- (2) To review and decide applications for variances as set forth in Article II.

- (3) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary as set forth in Article II.
- (4) To hear and decide applications for such special exceptions as may be authorized in the ordinance and to revoke special exceptions previously granted by the board as set forth in Article II.
- (5) No provision of this chapter shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the city.

Secs. 13-9-13-10. Reserved.

ARTICLE 2. – VARIANCES, SPECIAL EXCEPTIONS, AND APPEALS OF THE ZONING ADMINISTRATOR AND ORDERS OF ADMINISTRATIVE OFFICERS

Sec. 13-11. – Applications for variances.

- (1) Procedural requirements.
 - (a) Applications for variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the secretary of the board, who shall place the matter on the docket to be acted upon by the board. The zoning administrator shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.
 - (b) No variance shall be considered except after notice and a hearing as required by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.
 - (c) No variance shall be considered until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.
 - (d) The board shall offer an equal amount of time in a hearing on the case to the applicant and the staff of the local governing body.
- (2) Standard of review.
 - (a) The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in Virginia Code § 15.2-2201 and the criteria set out in this section.
 - (b) A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:
 - (i) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
 - (ii) The granting of the variance will not be of substantial detriment to adjacent property

- and nearby properties in the proximity of that geographical area;
 - (iii) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
 - (iv) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
 - (v) The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.
 - (c) In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.
- (3) The board shall not reconsider substantially the same application for a period of one (1) year, except by motion of the board.

Sec. 13-12. – Applications for special exceptions and revocation of special exceptions.

- (1) Procedural requirements.
 - (a) Applications for special exceptions may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the secretary of the board, who shall place the matter on the docket to be acted upon by the board. The zoning administrator shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.
 - (b) No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.
 - (c) No special exception shall be considered until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.
 - (d) The board shall offer an equal amount of time in a hearing on the case to the applicant and the staff of the local governing body.
- (2) Standard of review.
 - (a) In its review of special exception applications, the board shall consider the standards set

forth in section 14-6 of the zoning ordinance.

- (b) The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
- (3) The board shall not reconsider substantially the same application for a period of one (1) year, except by motion of the board.
- (4) The board may revoke a special exception previously granted by the board if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

Sec. 13-13. – Interpretations of a zoning district map where there is uncertainty as to the location of a district boundary.

- (1) After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

Sec. 13-14. - Appeals to the board from any order, requirement, decision, or determination made by an administrative officer.

- (1) Procedural requirements.
 - (a) An appeal to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the zoning ordinance or any modification of zoning requirements pursuant to section 15.2-2286 of the Code of Virginia.
 - (b) No appeal shall be considered except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.
 - (c) The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within ninety (90) days. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of

the person filing the appeal. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records.

- (d) The board shall offer an equal amount of time in a hearing on the case to the applicant, appellant, or other person aggrieved under Virginia Code § 15.2-2314 and the staff of the local governing body.
- (e) Any written notice of a zoning violation or written order of the zoning administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within thirty (30) days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
- (f) A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.
- (g) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator, and for good cause shown.
- (h) In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after sixty (60) days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The sixty-day limitation period shall not apply in any case where, with the concurrence of the city attorney, modification is required to correct clerical errors.

(2) Standard of review on appeal to the board.

- (a) The decision on appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be

presumed to be correct.

- (b) At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
- (c) The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision.

Sec. 13-15. - Proceedings to prevent construction of a building in violation of zoning ordinance.

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation, even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

Sec. 13-16. - Relation of zoning ordinance to other laws.

Whenever the regulations made under the zoning ordinance require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than area required in any other statute or local ordinance or regulation, the provisions of the zoning ordinance shall govern. Whenever the provisions of any other statute or local ordinance or regulations require a greater width or size of yards, courts or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by this ordinance, the provisions of such statute or local ordinance or regulation shall govern.

Sec. 13-17. - Fees.

Every application that comes before the board, whether an appeal of the zoning administrator's decision, a variance or a special exception, shall be accompanied by the nonrefundable fee from the following schedule. The sum shall be payable to the City of Hampton, incidental to reviewing, publishing, and reporting the application:

- (1) One hundred dollars (\$100.00) for any application that is associated with a current or proposed one-family residential use of property; and
- (2) Two hundred fifty dollars (\$250.00) for any application that is associated with a current or proposed use of property that is not one-family residential.

Secs. 13-18-13-20. Reserved.

AT A PUBLIC HEARING IN A REGULAR MEETING OF THE HAMPTON PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS, CITY HALL, HAMPTON, VIRGINIA, ON THURSDAY, JUNE 4, 2015 AT 3:30 P.M.

WHEREAS: the Hampton Planning Commission has before it this day Zoning Ordinance Amendment 165-2015, a proposed ordinance to amend and reenact Articles I and II of Chapter 13 of the zoning ordinance entitled "Board of Zoning Appeals" by amending sections 13-1 through 13-17 pertaining to the composition, powers, and duties of the Board of Zoning Appeals and variances, special exceptions, and appeals of the Zoning Administrator;

WHEREAS: In its 2015 session, by adoption of House Bill 1849, the Virginia General Assembly amended several sections of the Code of Virginia regarding the powers and duties of the Board of Zoning Appeals (BZA);

WHEREAS: Procedural changes included new limits on "ex parte" (one party) discussions, a requirement to share the materials of a case with applicant, and a requirement that applicants must receive the same amount of time as City staff to present their argument to the BZA;

WHEREAS: Substantive changes included a clarification of the standard of review for appeals of determinations of the Zoning Administrator and a lowered standard for the BZA to grant a variance;

WHEREAS: this amendment would bring the zoning ordinance into compliance with the requirements of House Bill 1849, which takes effect July 1, 2015, and would also make general housekeeping changes to reorganize the chapter; and

WHEREAS: there were no speakers at the public hearing.

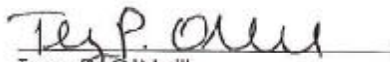
NOW, THEREFORE, on a motion by Commissioner Campbell and seconded by Commissioner Williams,

BE IT RESOLVED that the Hampton Planning Commission recommends to City Council approval of Zoning Ordinance Amendment 165-2015.

A roll call vote on the motion resulted as follows:

AYES:	Southall, Williams, Campbell, McCloud, LaRue
NAYS:	None
ABST:	None
ABSENT:	Schmidt, Bunting

A COPY; TESTE:


Terry R. O'Neill
Secretary to Commission

VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

CHAPTER 597

An Act to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.

[H 1849]

Approved March 26, 2015

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:

§ 15.2-2201. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable

statutes will be achieved.

"Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage, preserve, maintain, operate, or reside in a historic property in accordance with the provisions of § 15.2-2306 and other applicable statutes.

"Site plan" means the proposal for a development or a subdivision including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other information as required by the subdivision ordinance to which the proposed development or subdivision is subject.

"Special exception" means a special use; that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

"Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

"Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or location of a building or structure when the strict application of the ordinance would ~~result in unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the property*, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the ~~intended spirit and purpose of the ordinance, and would result in substantial justice being done~~. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

"Zoning" or "to zone" means the process of classifying land within a locality into areas and districts, such areas and districts being generally referred to as "zones," by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. With the exception of its secretary and the alternates, the board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The board

may elect as its secretary either one of its members or a qualified individual who is not a member of the board, excluding the alternate members. A secretary who is not a member of the board shall not be entitled to vote on matters before the board. ~~For Notwithstanding any other provision of law, general or special, for the~~ conduct of any hearing, a quorum shall be not less than a majority of all the members of the board ~~and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.~~ Except for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a majority vote of those present and voting. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice.

E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members of the board shall be appointed by the governing body. The governing body of such city shall also appoint at least one but not more than three alternates to the board.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings.

A. ~~The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.~~

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. ~~The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.~~ The board shall consider ~~the purpose and intent of any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.~~

2. ~~To authorize Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows: the burden of proof shall be on the~~

applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

When a property owner can show that his Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of the ordinance; or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance. (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

No such variance shall be authorized by the board unless it finds:

- a. That the strict application of the ordinance would produce undue hardship relating to the property;
- b. That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- c. That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No variance shall be authorized considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

§ 15.2-2314. Certiorari to review decision of board.

Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30 days after the final decision of the board.

Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The governing body, the landowner, and the applicant before the board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of zoning appeals.

The board of zoning appeals shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any arguments on questions of law *de novo*.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted an application for a variance, ~~or application for a special exception,~~ the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning~~

appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision.

In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or where the discretion of the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong, was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.

In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad faith or with malice. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that the court hear the matter on the question of whether the appeal was frivolous.

1 Ordinance To Amend And Re-Enact Articles I and II of Chapter 13 of The Zoning
2 Ordinance Of The City Of Hampton, Virginia Entitled "Board of Zoning Appeals" By
3 Amending Sections 13-1 through 13-17 Pertaining To The Composition, Powers, and
4 Duties of the Board of Zoning Appeals and Variances, Special Exceptions, and Appeals
5 of the Zoning Administrator.
6

7 **WHEREAS**, the public necessity, convenience, general welfare, and good zoning practice so
8 require;
9

10 **BE IT ORDAINED** by the Council of the City of Hampton, Virginia that Sections 13-1 through
11 13-7 of Chapter 13 of the Zoning Ordinance of the City of Hampton, Virginia, be amended and
12 re-enacted as follows:
13

14 **CHAPTER 13 – BOARD OF ZONING APPEALS**

15

16 **ARTICLE 1 – COMPOSITION, POWERS, AND DUTIES**

17

18 **Sec. 13-1. - Creation, appointment, term, etc.**

19

20 (1) *The board of zoning appeals ("board") for the City of Hampton is currently existing under*
21 *authority of prior law and Virginia Code § 15.2-2308 and is hereby continued in*
22 *existence.*
23

24 (2) **Membership.** *The board shall consist of five (5) residents of the City of Hampton*
25 *appointed by the circuit court.*
26

27 (3) **Alternates.** *The circuit court shall appoint at least one (1) but not more than three (3)*
28 *alternates to the board. The qualifications, terms and compensation of alternate*
29 *members shall be the same as those of regular members. A regular member, when he*
30 *knows he will be absent from or will have to abstain from any application at a meeting,*
31 *shall notify the chairman twenty-four (24) hours prior to the meeting of such fact. The*
32 *chairman shall select an alternate to serve in the absent or abstaining member's place*
33 *and the records of the board shall so note. Such alternate member may vote on any*
34 *application in which a regular member abstains.*
35

36 (4) **Qualifications.** *Members of the board shall hold no other public office in the city except*
37 *that one (1) may be a member of the planning commission.*
38

39 (5) **Terms.** *The terms of office of board members shall be for five (5) years, except that*
40 *original appointments shall be made for such terms that the term of one member shall*
41 *expire each year.*
42

43 (6) **Vacancies.** *The secretary of the board shall notify the circuit court at least thirty (30)*
44 *days in advance of the expiration of any term of office, and shall also notify the court*

promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

(7) Removal. *Any board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court, after a hearing held after at least fifteen (15) days' notice.*

~~There shall be a board of zoning appeals (hereinafter called the board), which shall consist of five (5) residents appointed by the circuit court of the City of Hampton, as provided by law. Their terms of office shall be for five (5) years each, except that the original appointments shall be made for such terms that the term of one (1) member shall expire each year. The secretary of the board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the city except that one (1) may be a member of the planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court shall appoint at least one (1) but not more than three (3) alternates to the board. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty four (24) hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.~~

~~Any member of the board or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or other just cause, by the circuit court that appointed him, after a hearing held after at least fifteen (15) days' notice.~~

Sec. 13-2. - Officers.

The board shall elect from its own membership a chairman and vice-chairman who shall serve annual terms as such, and may succeed themselves. The board shall appoint a secretary who shall not be a member of the board *or an alternate member*. It shall be the secretary's duty to keep the minutes and other records of the actions and deliberations of the board and to perform such other ministerial duties as the board shall direct.

Sec. 13-3. – Quorum *and voting*.

For the conduct of any hearing and taking of any action, a quorum shall be not less than a majority of all members of the board. *The concurring vote of a least three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of an*

administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance.

Sec. 13-4. - Procedures and records.

The board may make, alter, and rescind rules and forms for its procedures, consistent with ordinances of the city and general laws of the Commonwealth.

The board shall keep a full public record of its proceedings, including the recorded vote of each member upon each question, and shall submit a report of its activities to the council at least once each fiscal year.

Sec. 13-5. - Compensation.

Members of the board shall receive such compensation as may be established by the city council.

Sec. 13-6. - Meetings.

(1) The board by resolution may fix a schedule of regular meetings, *and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting pursuant to Virginia Code § 15.2-2309(8). Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.*

(2) ~~and~~ *The* chairman with the concurrence of two (2) other members may call for special meetings. The time, date and location of any special meeting shall be communicated to the members and the press as promptly as possible.

(3) The chairman, or in his absence the vice-chairman, may administer oaths and compel attendance of witnesses.

(4) All meetings of the board shall be open to the public.

Sec. 13-7. – *Ex Parte communications, case materials, and proceedings.*

The following applies to all cases brought before the board except for applications for special exceptions:

(1) *The non-legal staff of the city may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case.*

- (2) *The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case.*
- (3) *If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.*
- (4) *Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.*
- (5) *Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.*

Sec. 13-813-7. - Powers and duties.

The board shall have the following powers and duties:

- (1) To hear and decide appeals from any order, requirement, decision, or determination made by *the zoning administrator or other* an administrative officer in the administration or enforcement of the zoning ordinance *as set forth in Article II. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.*
- (2) To *review and decide applications for variances as set forth in Article II.* authorize, upon appeal or original application, in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:
- (a) ~~When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic~~

conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance.

(b) — No such variance shall be authorized by the board unless it finds:

(i) — That the strict application of the ordinance would produce undue hardship relating to the property;

(ii) — That the hardship is not shared generally by other properties in the same zoning district and the same vicinity;

(iii) — That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and

(iv) — That any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.

(c) — No variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia.

(d) — A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.

(e) — No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

(f) — In authorizing a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and city ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

- (g) ~~That any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.~~
- (3) ~~To hear and decide appeals from the decision of the zoning administrator notice and hearing as provided by section 15.2-2204 of the Code of Virginia.~~
- (34) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary *as set forth in Article II*. After notice to the owners of the property affected by the question, and after public hearing with notice as required by section 15.2-2204 of the Code of Virginia, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- (5) ~~No provision of this chapter shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the city.~~
- (46) To hear and decide applications for such special exceptions as may be authorized in the ordinance *and to revoke special exceptions previously granted by the board as set forth in Article II*. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being, and will continue to be, complied with. No such special exception may be granted except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia. Unless the application is sponsored by the City of Hampton, the board shall not grant any special exception until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid.
- (7) ~~To revoke a special exception previously granted by the board if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia.~~
- (8) ~~When giving any notice required by this chapter to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.~~
- (5) *No provision of this chapter shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the city.*

Secs. 13-9-13-10. Reserved.

ARTICLE 2. – VARIANCES, SPECIAL EXCEPTIONS, AND APPEALS OF THE ZONING ADMINISTRATOR *AND ORDERS OF ADMINISTRATIVE OFFICERS*

Sec. 13-11. – Applications for variances.

(1) Procedural requirements.

- (a) Applications for variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the secretary of the board, who shall place the matter on the docket to be acted upon by the board. The zoning administrator shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.*
- (b) No variance shall be considered except after notice and a hearing as required by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.*
- (c) No variance shall be considered until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.*
- (d) The board shall offer an equal amount of time in a hearing on the case to the applicant and the staff of the local governing body.*

(2) Standard of review.

- (a) The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in Virginia Code § 15.2-2201 and the criteria set out in this section.*
- (b) A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:*
 - (i) The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;*
 - (ii) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;*

- (iii) *The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;*
- (iv) *The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and*
- (v) *The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.*
- (c) *In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.*
- (3) *The board shall not reconsider substantially the same application for a period of one (1) year, except by motion of the board.*

Sec. 13-12. – Applications for special exceptions and revocation of special exceptions.

- (1) *Procedural requirements.*
- (a) *Applications for special exceptions may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the secretary of the board, who shall place the matter on the docket to be acted upon by the board. The zoning administrator shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.*
- (b) *No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.*

(c) No special exception shall be considered until any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.

(d) The board shall offer an equal amount of time in a hearing on the case to the applicant and the staff of the local governing body.

(2) Standard of review.

(a) In its review of special exception applications, the board shall consider the standards set forth in section 14-6 of the zoning ordinance.

(b) The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

(3) The board shall not reconsider substantially the same application for a period of one (1) year, except by motion of the board.

(4) The board may revoke a special exception previously granted by the board if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

Sec. 13-13. – Interpretations of a zoning district map where there is uncertainty as to the location of a district boundary.

(1) After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

Sec. 13-11. – Applications for special exceptions and variances.

~~Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the secretary of the board,~~

who shall place the matter on the docket to be acted upon by the board. No such special exceptions or variance shall be authorized except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia. The zoning administrator shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.

Sec. 13-12. -- Reconsideration upon denial.

Upon denial of an application for either a special exception or variance, the board shall not reconsider substantially the same application for a period of one (1) year, except by motion of the board.

Sec. 13-1413. - Appeals to the board *from any order, requirement, decision, or determination made by an administrative officer.*

(1) *Procedural requirements.*

- (a)** An appeal to the board may be taken by any person aggrieved or by any officer, department, board, or bureau of the city affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the zoning ordinance or any modification of zoning requirements pursuant to section 15.2-2286 of the Code of Virginia.
- (b)** *No appeal shall be considered except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.*
- (c)** *The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within ninety (90) days. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records.*
- (d)** *The board shall offer an equal amount of time in a hearing on the case to the applicant, appellant, or other person aggrieved under Virginia Code § 15.2-2314 and the staff of the local governing body.*

(e) Any written notice of a zoning violation or written order of the zoning administrator shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty (30) days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. The appeal shall be taken within thirty (30) days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(fe) A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.

~~(gd)~~ An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator, and for good cause shown.

(he) In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after sixty (60) days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The sixty-day limitation period shall not apply in any case where, with the concurrence of the city attorney, modification is required to correct clerical errors.

(2) *Standard of review on appeal to the board.*

- (a) *The decision on appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct.*
- (b) *At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.*
- (c) *The board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision.*

~~Sec. 13-14. - Procedure on appeal.~~

~~The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within ninety (90) days. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirements, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance, or to effect any variance from the ordinance. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.~~

~~The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records.~~

Sec. 13-15. - Proceedings to prevent construction of a building in violation of zoning ordinance.

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the zoning ordinance, by suit filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation, even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

Sec. 13-16. - Relation of *zoning* ordinance to other laws.

Whenever the regulations made under the zoning ordinance require a greater width or size of yards, courts, or other open spaces; require a lower height of building or less number of stories;

require a greater percentage of lot to be left unoccupied; or impose other higher standards than area required in any other statute or local ordinance or regulation, the provisions of the zoning ordinance shall govern. Whenever the provisions of any other statute or local ordinance or regulations require a greater width or size of yards, courts or other open spaces; require a lower height of building or less number of stories; require a greater percentage of lot to be left unoccupied; or impose other higher standards than are required by this ordinance, the provisions of such statute or local ordinance or regulation shall govern.

Sec. 13-17. - Fees.

Every application that comes before the board, whether an appeal of the zoning administrator's decision, a variance or a special exception, shall be accompanied by the nonrefundable fee from the following schedule. The sum shall be payable to the City of Hampton, incidental to reviewing, publishing, and reporting the application:

- (1) One hundred dollars (\$100.00) for any application that is associated with a current or proposed one-family residential use of property; and
- (2) Two hundred fifty dollars (\$250.00) for any application that is associated with a current or proposed use of property that is not one-family residential.

Secs. 13-18-13-20. Reserved.



City of Hampton, VA

Agenda Review

File Number: 15-0219

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: 15-0219

Request Number: R-2015-00212

File Type: **Planning Actions - Use Permit**

Department: **Planning**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Tolu Ibikunle**

Phone:

Requestor:

Phone:

Presenter: **Alison Alexander, City Planner**

Phone: **757-728-5238**

Title: **Use Permit Application No. 15-00008: by Kuang Chu Peng DBA Sushi Hampton LLC for live entertainment inside and outside Sushi King restaurant at 5101 Kilgore Avenue [LRSN 13002022].**

Action Requested: **Approval of Use Permit No. 15-00008 with twelve (12) conditions.**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments: Application
Conditions
PC Resolution
Staff Report
Presentation

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The applicant proposes providing live entertainment at an existing restaurant and bar located at 5101 Kilgore Avenue. Entertainment to be offered will focus on live bands, karaoke, and music from a disc jockey. The property is zoned Limited Commercial (C-2) District and also lies in the Special Public Interest - Coliseum Central overlay district, both of which allow for live entertainment with a use permit.

The Hampton Community Plan (2006, as amended) calls for nurturing small and startup businesses and expanding tourism and entertainment opportunities within the city. The Coliseum Central Master Plan

further recommends a mix of development that is regionally-unique as well as locally-serving be pursued. Live entertainment at Sushi King, an independently run restaurant, is consistent with the policies and goals of the plan.

In relation to the addition of live entertainment, no significant physical changes to the building are proposed, nor an increase in capacity. Therefore, additional environmental or traffic impacts are not anticipated. Parking needs are satisfactorily met at Peninsula Town Center.

Requested hours of live entertainment are from 11:00 AM until 10:00 PM Sunday through Thursday and 12:00 PM until 2:00 AM Friday/Saturday. Staff recommends limiting outdoor live entertainment from 11:00 AM until 9:00 PM Sunday through Thursday and 11:00 AM until 10:00 PM Friday/Saturday. These hours would be in accordance with other use permits issued for establishments of a similar nature.

Both Staff and Planning Commission recommend approval of this application with twelve (12) attached conditions.

DATES ADVERTISED: Planning Commission: May 21, 2015 and May 28, 2015

City Council: June 25, 2015 and July 2, 2015



Application for
Use Permit

OFFICE USE ONLY
Date Received:

21 April 2015

Complete this application in its entirety and submit pages 4 and 5 along with the required materials (including any required supplements) as listed on page 2 to the address below:

City of Hampton
Community Development Department, Planning Division
22 Lincoln Street, 5th Floor
Hampton, Virginia 23669

Case Number: UP 15-00008

1. PROPERTY INFORMATION

Address or Location 5101 Kilgore Ave, Hampton 23666
LRSN 13002022 Zoning District C-2, Limited Commercial
Current Land Use Full-service restaurant
Proposed Land Use full-service restaurant with entertainment privilege
The proposed use will be in: ☒ an existing building ☐ a new addition ☐ a new building

2. PROPERTY OWNER INFORMATION (an individual or a legal entity may be listed as owner)

Owner's Name Peninsula Main VA, LLC
Address 16000 N. Dallas Pkwy, #300 City Dallas State TX Zip 75248
Phone 407-832-5000 Email ed@peninsula-towncenter.com

3. APPLICANT INFORMATION (if different from owner)

Applicant's Name Kuang Chu Peng of Sushi Hampton LLC
Address 1310 Curtin Ct City Hampton State VA Zip 23666
Phone 757-320-9777 Email tony@a1-image.com

4. APPLICANT AGENT INFORMATION (if different from applicant)

Agent's Name Crystal Stump of ABC Consulting
Address 1800 S Church St #108 City Smithfield State VA Zip 23430
Phone 757-617-9773 Email crystal@abcconsultingva.com

5. CERTIFICATION FOR LEGAL ENTITY PROPERTY OWNERS

Complete this section only if the property owner is **not** an individual but rather a legal entity such as a corporation, trust, LLC, partnership, diocese, etc. as specified in Step 2 above.

"I hereby submit that I am legally authorized to execute this application on behalf of the fee-simple owner of this property. I have read this application and it is submitted with my full knowledge and consent. I authorize city staff and representatives to have access to this property for inspection. The information contained in this application is accurate and correct to the best of my knowledge."

Name(s), title(s), signature(s), and date(s) of authorized representative(s) of the legal entity (attach additional page if necessary):

Name of Legal Entity Peninsula Main VA, LLC

Signed by:

Name (printed) Zaffar S. Tabany Its (title) President

Signature [Signature] Date 3/24/15

Name (printed) _____ Its (title) _____

Signature _____ Date _____

Name (printed) _____ Its (title) _____

Signature _____ Date _____

6. CERTIFICATION FOR INDIVIDUAL PROPERTY OWNERS

Complete this section only if the property owner is an individual or individuals.

"I hereby submit that I am the fee-simple owner of this property. I have read this application and it is submitted with my full knowledge and consent. I authorize city staff and representatives to have access to this property for inspection. The information contained in this application is accurate and correct to the best of my knowledge."

Name(s), signature(s), and date(s) of owner(s) (attach additional page if necessary):

Name (printed) _____

Signature _____ Date _____

Name (printed) _____

Signature _____ Date _____

OFFICE USE ONLY

☐ Application Form

☐ Narrative Statement

☐ Supplemental Form (if required)

☐ Application Fee

☐ Survey Plat

☐ Additional materials (if required)



Supplemental Information for
Live Entertainment '2'

OFFICE USE ONLY
Date Received:

Complete this supplement in its entirety and submit with the completed Use Permit application form to the address below:

City of Hampton
Community Development Department, Planning Division
22 Lincoln Street, 5th Floor
Hampton, Virginia 23669

Case Number: UP _____

1. LOT INFORMATION

Current Number of On-site Parking Spaces N/A Peninsula Town Center Proposed Number of On-site Parking Spaces N/A

2. BUILDING INFORMATION

Square Footage 6112 Square Footage of Live Entertainment Area 5000

☐ Please attach a floor plan of the facility with all rooms labeled as to their use and square footage and showing the location of the live entertainment area

3. OPERATIONAL INFORMATION

Existing Use Full service restaurant Proposed Use Full service restaurant with entertainment privilege

Proposed Type(s) of Entertainment to be Offered Amplified music, live bands, karaoke, dancing, DJ

Equipment Required for Type(s) of Entertainment to be Offered Band equipment, Stereo equipment and/or DJ booth, dance floor

Seating Capacity 278 Length of Ownership of this Business UC formed 2/13/15 restaurant is currently not opened

Existing Hours of Operation: Mon 11am-10pm Tue 11am-10pm Wed 11am-10pm
Thu 11am-10pm Fri 12pm-2am Sat 12pm-2am Sun 11am-10pm

Proposed Hours of Operation: Mon _____ Tue Same Wed _____
Thu _____ Fri Same Sat _____ Sun _____



1807 South Church St
Suite 108-PMB 119
Smithfield, VA 23430
757.617.9773 or 757.876.9428
crystal@abcconsultingva.com
natasha@abcconsultingva.com
www.abcconsultingva.com
www.toastva.com

April 21, 2015

Alison Alexandar
c/o Planning and Zoning Administrative Division
22 Lincoln Street, 5th Floor
Hampton, VA 23669
(757) 728-5238

Re: Sushi King Use Permit Application for Live Entertainment

Ms. Alexander,

This communication is in regards to a current applicant for an Entertainment Use Permit, **Sushi Hampton LLC**, trading as *Sushi King*, located at 5105 Kilgore Ave, Hampton, 23666. This is a 6112 sq. ft. restaurant that is located in the Peninsula Town Center complex.

Sushi King is an upscale Asian-inspired restaurant that features a sit-down all-you-can-eat concept where customers can order unlimitedly from the menu. Hours of Operation are Sunday-Thursday, 11am-10pm and Friday-Saturday 12pm-2am. This establishment is currently in the final stages of applying for a Wine and Beer On Premises and Mixed Beverage license with Virginia ABC. Song Huang and Kuang Peng, owners, would like to offer occasional entertainment (typically on Fridays and Saturdays) such as karaoke, musicians, DJs, etc. in order to enhance the dining experience for their customers. The staff consists of six (6) full-time employees and eight (8) part-time employees. It has a seating capacity of approximately 200. Song Huang and Kuang Peng are the members of the LLC. Both persons are experienced with owning and operating restaurants here in Virginia. Mr. Peng is the actual restaurant manager while Mr. Huang handles more accounting/administrative duties pertaining to the restaurant and LLC.

Please advise if any further information is needed regarding this Entertainment Use Permit Application. I can be reached at crystal@abcconsultingva.com or (757) 617-9773. Thank you for your consideration.

With kind regards,

Crystal Stump
CEO & Senior Consultant

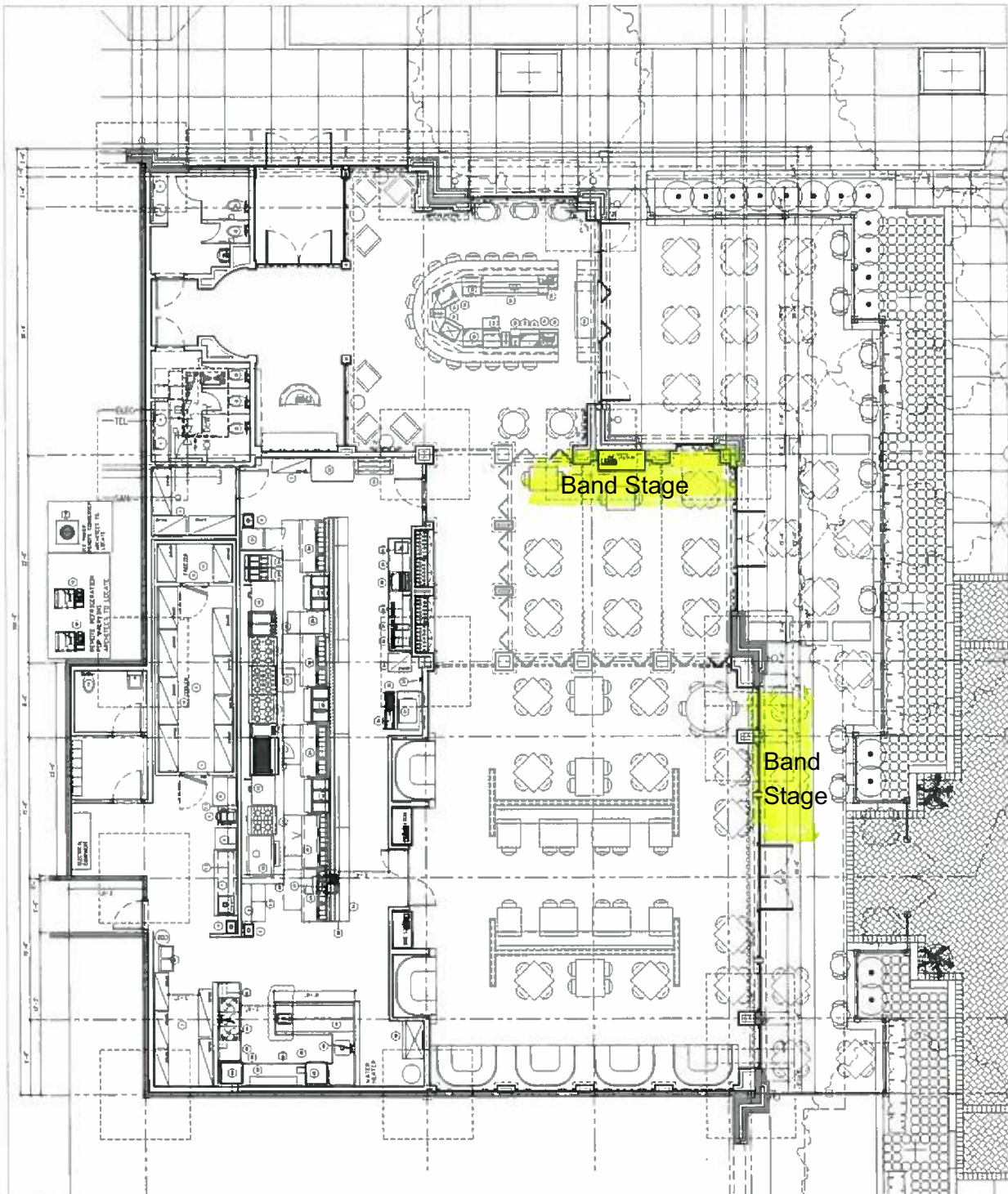
Sushi King
5101 Kilgore Avenue
Hampton, VA 23666

Seating : 258

Seating : 258

Band Stage indoor: 6'x12'

Band Stage outdoor: 6'x12'



Use Permit Application No. 15-00008
Kuang Chu Peng DBA Sushi Hampton LLC: Live Entertainment II
1310 Curtin Ct., Hampton, VA 23666

1. Issuance of Permit

The Use Permit applies only to 5101 Kilgore Avenue [LRSN 13002022] and is not transferable to another location.

2. Location of Live Entertainment

Live Entertainment shall be limited to the 6'x 12' areas indicated indoor and outdoor on the attached floor plan identified as "Band Stage," attached hereto as Exhibit A. The set up and use of any equipment shall not interfere with required clear space for safe exit in the case of emergency, per the Uniform Statewide Building Code and/or the Statewide Fire Prevention Code.

3. Hours of Operation

The hours of operation for live entertainment shall be limited to the following:

Indoor

§ Sunday –Thursday 11:00AM to 10:00PM

§ Friday - Saturday 11:00 AM to 2:00 AM

Outdoor

§ Sunday – Thursday 11:00AM to 9:00 PM

§ Friday- Saturday 11:00 AM to 10:00 PM

4. Capacity

During the time that live entertainment is being provided, patronage and staff shall not exceed 300 occupants, or the maximum capacity determined by a City building official, whichever is less.

5. Sound

Live entertainment located at 5101 Kilgore Avenue shall comply with City Code section 22-9 with respect to any sound or noise.

6. Staffing

Sufficient staff shall be provided to monitor patron behavior upon their exit of the building into the surrounding areas.

7. Licensing and Compliance with all Laws

When required by law, the restaurant must maintain a valid license from the Virginia Department of Alcoholic Beverage Control (VABC) and comply with all restrictions or requirements imposed by VABC. In addition, this Use Permit may be terminated for any violation of federal, state, or local law.

8. Dancing

The property owner shall comply with section 4-16 of the Hampton City Code with respect to dancing on the premises and dance floor area.

9. Third Party Promoters

Neither the facility nor any portion of it shall be leased, let, or used by any third party to stage an event for profit. No outside promoter shall be permitted to use, operate, rent, or host any event at the facility.

10. Revocation

Failure to comply with any conditions of this Use Permit shall constitute a violation of the provisions of Chapter 14 of the Zoning Ordinance and shall be cause for revocation of the use permit by City Council.

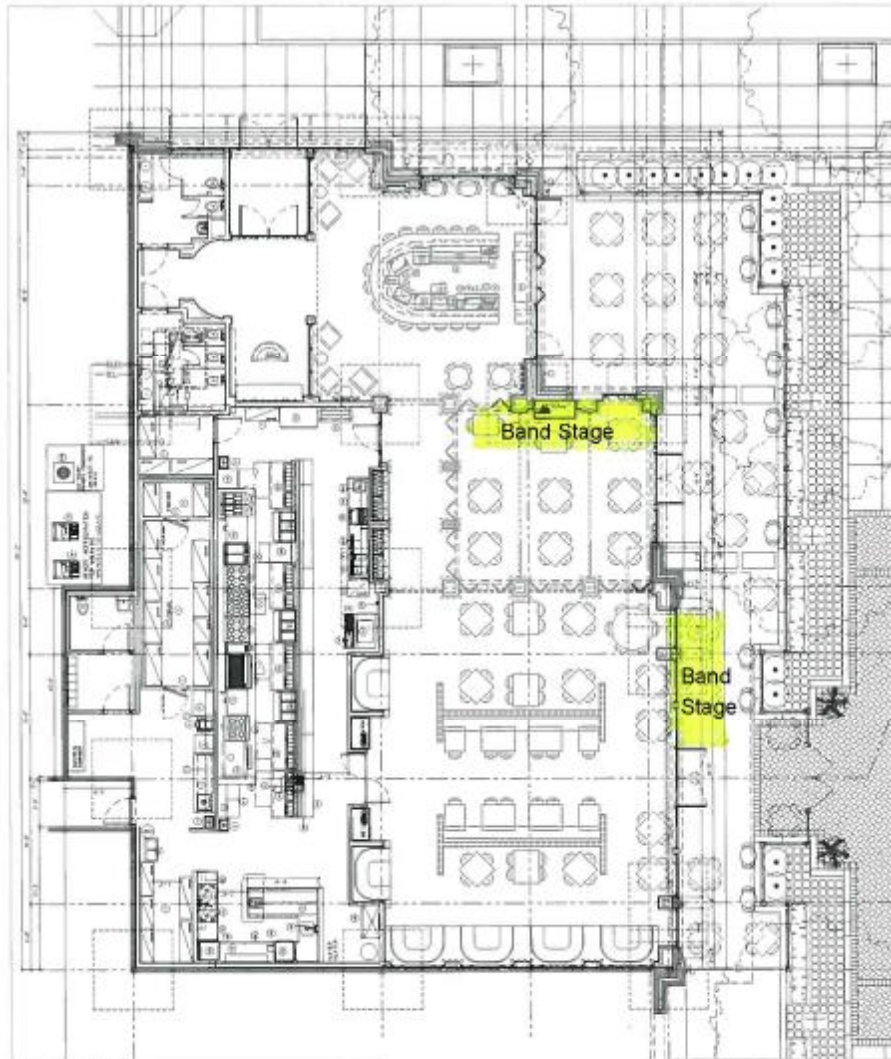
11. Nullification

- a. The Use Permit shall become null and void if the use is not established within twelve (12) months of the date of approval by the City Council.
- b. The Use Permit shall become null and void if the facility is not used for the permitted use for a period of two (2) years.

12. Review of Live Entertainment Uses

After 12 months of operation, the Use Permit will be scheduled for review by the Director of Community Development (the "Director") to consider if the continuation of the Use Permit would not be detrimental to the public health, safety, and welfare and that to continue the activities under the Use Permit would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district. The review will be based, in part, upon a physical site review, traffic flow and control, access to and circulation within the property, off-street parking and loading, hour and manner of operation, noise, light, neighborhood complaints, police service calls, and any violations of any federal, state, or local law. If after review, the Director determines that the Use Permit would not be detrimental to the public health, safety, and welfare and that to continue the activities under the Use Permit would not cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the permit shall be scheduled for the same administrative review in 5-year increments. If the Director determines that the Use Permit would be detrimental to the public health, safety, and welfare and that to continue the activities under the Use Permit would cause public inconvenience, annoyance, disturbance, or have an undue impact on the community or be incompatible with other uses of land in the zoning district, the Director will notify the Permittee in writing and may initiate the revocation process before City Council. Nothing contained herein shall limit the City's ability to enforce City Code violations at any time during the operation

Exhibit A



AT A PUBLIC HEARING IN A REGULAR MEETING OF THE HAMPTON PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS, CITY HALL, HAMPTON, VIRGINIA, ON THURSDAY, JUNE 4, 2015 AT 3:30 P.M.

WHEREAS: the Hampton Planning Commission has before it this day a proposal by Kuang Chu Peng DBA Sushi Hampton LLC to permit live entertainment inside and outside of Sushi King at 5101 Kilgore Avenue (LRSN 13002022);

WHEREAS: the Hampton Community Plan (2006, as amended) recommends mixed-use in this area and calls for the expansion of entertainment and cultural opportunities within the city and nurturing small and start-up businesses;

WHEREAS: the site is currently zoned C-2 (Limited Commercial District) and SPI-CC (Special Public Interest – Coliseum Central) District, which permits live entertainment 2 with an approved use permit;

WHEREAS: twelve conditions are attached to address, among other things, the location of live entertainment, hours of operation, sound, capacity, dancing, and revocation; and

WHEREAS: no one from the public spoke in favor or opposition of this proposal,

NOW, THEREFORE, on a motion by Commissioner Andre McCloud and seconded by Commissioner Gregory Williams,

BE IT RESOLVED that the Hampton Planning Commission recommends to City Council approval of Use Permit Application No. 15-00008, subject to twelve (12) conditions.

A roll call vote on the motion resulted as follows:

AYES:	Southall, Williams, Campbell, Schmidt, McCloud, LaRue
NAYS:	None
ABST:	None
ABSENT:	Bunting

A COPY; TESTE:


Terry P. O'Neill
Secretary to Commission

Use Permit Application #15-00008



5101 Kilgore Ave
Kuang Chu Peng
DBA Sushi Hampton LLC

City Council
July 8, 2015

Application

Permit live entertainment
Inside & outside a restaurant

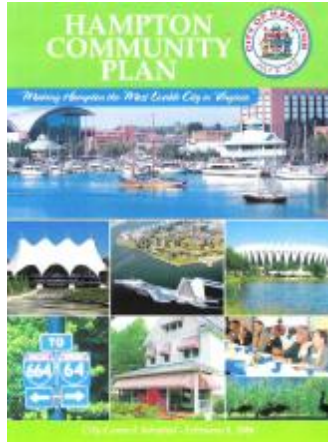
Community Development Department
July 8, 2015

Use Permit No. 15-00008





Public Policy



(2006, as amended)

- § Support City's economic development
- § Expand entertainment opportunities throughout Hampton
- § Nurture small and start up businesses

Community Development Department
July 8, 2015

Use Permit No. 15-00008

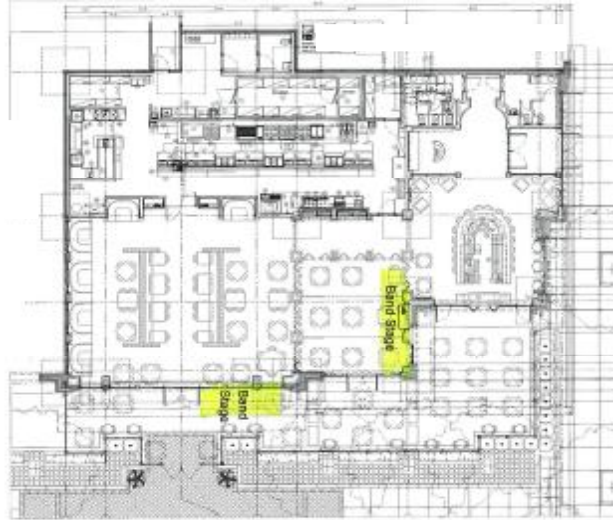
Conditions

- § Location
- § Hours of operation
- § Sound
- § Revocation

Community Development Department
July 8, 2015

Use Permit No. 15-00008

Conditions



Community Development Department
July 8, 2015

Use Permit No. 15-00008

Community Meeting

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
June 2015						
	1	2 X	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	JULY			

June 2015 Calendar. Printable calendar available from www.calendarbase.com

Community Development Department
July 8, 2015

Use Permit No. 15-00008

Recommendation

STAFF: Recommend **Approval** of
Use Permit Application No. 15-00008
with 12 conditions

PLANNING COMMISSION:
Recommend **Approval** of
Use Permit Application No. 15-00008
with 12 conditions



City of Hampton, VA

Agenda Review

File Number: 15-0218

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0218**

Request Number: **R-2015-00211**

File Type: **Planning Actions - Use Permit**

Department: **Planning**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Tolu Ibikunle**

Phone:

Requestor:

Phone:

Presenter: **Matt Smith, City Planner**

Phone: **757-727-6077**

Title: **Use Permit Application No. 15-00005: by Rachael Wright on behalf of Westview Lakes Homeowners Association, Inc. for an active park/playground at Westview Dr. [LRSN 5000487].**

Action Requested: **Approve Use Permit No. 15-00005 with six (6) conditions.**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments: Application
Conditions
PC Resolution
Staff Report
Presentation
Resident Communications
Westview Lakes Memo

Date	Acting Body	Action
6/23/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

Westview Lakes is a subdivision of roughly 300 homes located off of Saunders Road in northwest Hampton that was developed in the 1980s and early 1990s. Regulations under which the subdivision was developed required dedicated open space. The Westview Lakes HOA erected playground equipment on a portion of that open space around the year 2000. Hampton's Zoning Ordinance permits parks/playgrounds in the Multiple Residence (R-M) District, in which the subdivision is located, with the approval of a use permit. Since the installation of the playground equipment, common area in the

subdivision has been used as a park/playground without approval of a use permit.

In May 2014, a concrete pad and basketball hoop were installed at the park/playground. Complaints about activities related to the use of the basketball court brought the existence of the park/playground to the attention of city staff. A Notice of Zoning Violation was issued to the HOA stating that use of common area as a park/playground must cease pending final consideration of a use permit by City Council.

The park/playground is roughly .85 acres and located adjacent to single family residence homes. The National Recreation and Park Association provides park classification and facility guidelines that define a mini park as one less than one acre in size, with a one quarter mile service radius, that is used to address limited, isolated, or unique recreational needs. This description is appropriate to describe the Westview Lakes park/playground. Passive recreation facilities, such as picnic tables, benches, and play areas for small children, are generally considered most appropriate for mini parks.

The Hampton Community Plan (2006 as amended) provides policies calling for community interaction, access to recreational facilities, and the provision of parks and recreation facilities that contribute to the health and safety of children and youth. It also calls for promoting compatibility among differing land uses and safeguarding the integrity of residential neighborhoods. The Westview Lakes park/playground generally aligns with these policies. Recommended conditions attached to the use permit can further bring the park/playground into alignment with the Community Plan.

If this application is approved, staff recommends attaching conditions that address hours of operation of the park/playground and the location of park facilities. At the Planning Commission meeting, Commissioners proposed a change to the staff recommended conditions.

Staff recommends approval of Use Permit Application #15-00005 with 6 conditions.

The Planning Commission recommends approval of Use Permit Application #15-00005 with 6 conditions subject to amending Condition 3. The amended condition is labeled 3B in the attached conditions.

DATES ADVERTISED: Planning Commission: May 21, 2015 and May 28, 2015

City Council: June 25, 2015 and July 2, 2015



**WE WOULD LIKE TO BE ON THE
AGENDA FOR THE JUNE 2015 MEETING.*
Application for
Use Permit

Complete this application in its entirety and submit pages 4 and 5 along with the required materials (including any required supplements) as listed on page 2 to the address below:

City of Hampton
Community Development Department, Planning Division
22 Lincoln Street, 5th Floor
Hampton, Virginia 23669

OFFICE USE ONLY
Date Received:

RECEIVED

MAR 17 2015

PLANNING DEPT.

Case Number: UP 15-00005

1. PROPERTY INFORMATION

Address or Location Mallard Court

LRSN 5000487

Zoning District R-M

Current Land Use playground & basketball court

Proposed Land Use playground & basketball court

The proposed use will be in: ☐ an existing building ☐ a new addition ☐ a new building

**COMMON AREA IN HOMEOWNERS ASSOCIATION*

2. PROPERTY OWNER INFORMATION (an individual or a legal entity may be listed as owner)

Owner's Name Westview Lakes Homeowners Association, Inc

Address 11818 Rock Landing Drive STE 204 City NEWPORT NEWS State VA Zip 23606

Phone 757-873-1800 Email rwright@communitygroup.com

3. APPLICANT INFORMATION (if different from owner)

Applicant's Name Rachael Wright

Address 11818 Rock Landing Drive STE 204 City NEWPORT NEWS State VA Zip 23606

Phone 757-873-1800 Email rwright@communitygroup.com

4. APPLICANT AGENT INFORMATION (if different from applicant)

Agent's Name _____

Address _____ City _____ State _____ Zip _____

Phone _____ Email _____

5. CERTIFICATION FOR LEGAL ENTITY PROPERTY OWNERS

Complete this section only if the property owner is **not** an individual but rather a legal entity such as a corporation, trust, LLC, partnership, diocese, etc. as specified in Step 2 above.

"I hereby submit that I am legally authorized to execute this application on behalf of the fee-simple owner of this property. I have read this application and it is submitted with my full knowledge and consent. I authorize city staff and representatives to have access to this property for inspection. The information contained in this application is accurate and correct to the best of my knowledge."

Name(s), title(s), signature(s), and date(s) of authorized representative(s) of the legal entity (attach additional page if necessary):

Name of Legal Entity Westview Lakes Homeowners Association, INC

Signed by:

Name (printed) Sherrie Turner, Its (title) Vice President

Signature Sherrie Turner Date 3/9/15

Name (printed) _____, Its (title) _____

Signature _____ Date _____

Name (printed) _____, Its (title) _____

Signature _____ Date _____

6. CERTIFICATION FOR INDIVIDUAL PROPERTY OWNERS

Complete this section only if the property owner is an individual or individuals.

"I hereby submit that I am the fee-simple owner of this property. I have read this application and it is submitted with my full knowledge and consent. I authorize city staff and representatives to have access to this property for inspection. The information contained in this application is accurate and correct to the best of my knowledge."

Name(s), signature(s), and date(s) of owner(s) (attach additional page if necessary):

Name (printed) _____

Signature _____ Date _____

Name (printed) _____

Signature _____ Date _____

OFFICE USE ONLY

☐ Application Form

☐ Narrative Statement

☐ Supplemental Form (if required)

☐ Application Fee

☐ Survey Plat

☐ Additional materials (if required)

Westview Lakes Homeowner's Association, Inc.

February 18, 2015

To whom it may concern:

My name is Rachael Wright and I am the Association Manager for Westview Lakes Homeowners Association located in Hampton, VA. It has recently been brought to our attention due to a homeowner complaining to the City about a basketball court that was installed in the common area in early 2014 that there is no Use Permit on file with the City. We are requesting the City to allow us to obtain this permit and keep the basketball court and playground equipment installed in this common area.

Let me provide you a little history of the playground equipment and basketball court. The playground equipment was installed over 15 years ago and the board of directors decided to start the process of installing a new playground set due to the old one being a safety hazard. In 2013 the association paid over \$100,000 for a new playground set for the children and homeowners in the community. The board did not realize a use permit was necessary based off of playground equipment already being in the same location the new equipment was installed on. Also in 2012 the board discussed the installation of a basketball court to keep the children in the community from playing in the street. The board held monthly meetings, annual meetings and also a town hall meeting to discuss the basketball court with homeowners. The board of directors also took it a step further and walked around the vicinity of where the basketball court would be installed and talked to homeowners about it and got their opinion. The homeowners the board talked to were all for the installation of the court. The basketball court location was discussed over a few years before it was actually installed. The board decided to install it in the common area located next to the playground since it was an open area and the children of the community could be monitored while it was in use. We have also installed a basketball court rules sign and a playground rules sign located in this same area. The basketball court has been mentioned in newsletters as well as the rules of the court. We would like to obtain this permit so we can keep both the playground equipment and the basketball court as it benefits every homeowner in the association.

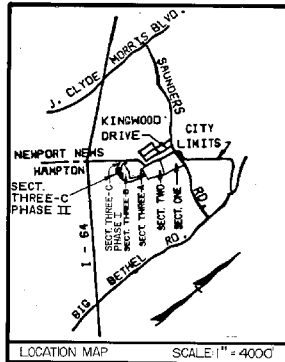
With this letter I have attached the rules we have for the playground and basketball court as well as the drawings. We appreciate any assistance you can provide us.

Sincerely,

Rachael Wright

On behalf of the Board of Directors for Westview Lakes Homeowners Association

Community Group, Inc.
11818 Rock Landing Drive, Ste. 204
Newport News, VA 23606
757-873-1800/Fax:757-873-3441



LOCATION MAP SCALE: 1" = 400'

CURVE DATA					
NO.	RADIUS	DELTA	TANGENT	LENGTH	CHORD
1	250.00'	45° 08' 28"	103.91'	196.97'	191.91'
2	250.00'	70° 56' 14"	178.12'	309.52'	290.13'
3	1300.00'	06° 19' 22"	71.80'	143.46'	143.35'

WESTVIEW LAKES SECTION THREE-C PHASE II HAMPTON, VIRGINIA



SCALE: 1" = 50' DATE: JULY 24, 1992 SHEET: 1
JOB NO. 24051.15 OF 1

APPROVED FOR CITY OF HAMPTON
CITY MANAGER DATE

THIS IS TO CERTIFY THAT TITLE TO THE LAND EMBRACED IN THIS SUBDIVISION IS IN THE NAME OF SCOTLAND SQUARE ASSOCIATES, A VIRGINIA GENERAL PARTNERSHIP, AND WAS ACQUIRED FROM BENJAMIN J. FISCELLA & ROBERT J. FISCELLA, BY DEED DATED APRIL 8, 1985 AND RECORDED IN DEED BOOK 716, PAGE 300, DULY RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF HAMPTON, VIRGINIA.

TO ALL PARTIES INTERESTED IN TITLES TO PREMISES SURVEYED, WE HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AS PER RECORDED DESCRIPTION AND IS CORRECT AND THERE ARE NO ENCROACHMENTS EITHER WAY ACROSS PROPERTY LINES EXCEPT AS SHOWN. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL THE REQUIREMENTS AS SET FORTH IN THE ORDINANCE FOR APPROVAL OF PLATS OF SUBDIVISION FOR RECORDED IN THE CITY OF HAMPTON HAVE BEEN COMPLIED WITH.

BALDWIN & GREGG, LTD.

BY: *Larry P. Collins*

THIS PLAT OF SUBDIVISION INCLUDING THE DEDICATION OF STREETS, DRAINAGE, AND UTILITY EASEMENTS IS WITH FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS.

SCOTLAND SQUARE ASSOCIATES,
A VIRGINIA GENERAL PARTNERSHIP

BY: NEWJEFF CORPORATION, GENERAL PARTNER

A.R. Caplan
A. R. CAPLAN, PRESIDENT

BY: WESTVIEW BUILDING CORPORATION, GENERAL PARTNER

R.S. Collins
R. S. COLLINS, PRESIDENT

I, *Larry P. Collins*, NOTARY PUBLIC IN AND FOR THE CITY AND STATE AFORESAID, DO HEREBY CERTIFY THAT A. R. CAPLAN, PRESIDENT OF NEWJEFF CORPORATION AND R. S. COLLINS, PRESIDENT OF WESTVIEW BUILDING CORPORATION, WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING HAVE DULY ACKNOWLEDGED THE SAME BEFORE ME IN MY CITY AND STATE AFORESAID.

GIVEN UNDER MY HAND THIS 20 DAY OF August, 1992.

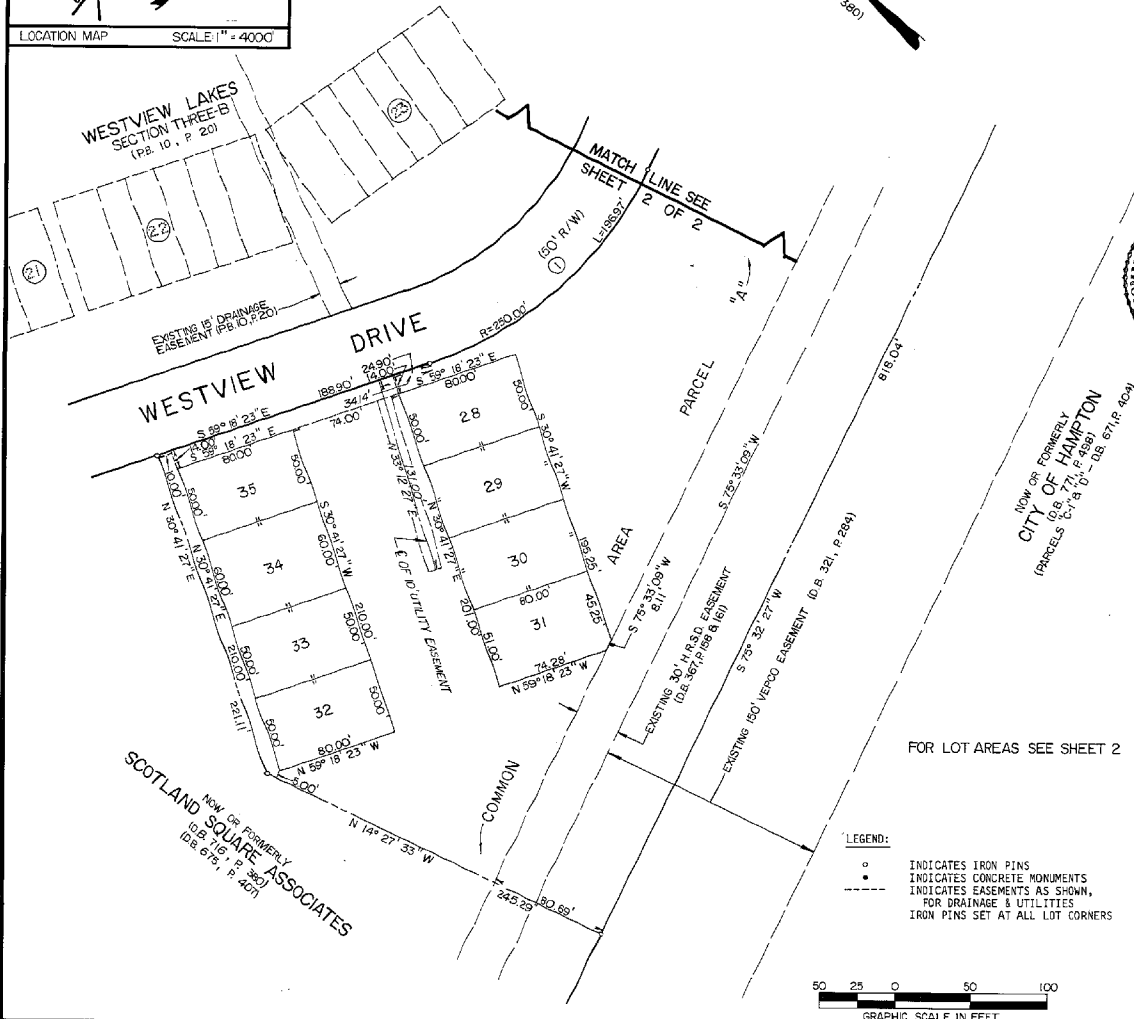
Larry P. Collins
NOTARY PUBLIC

MY COMMISSION EXPIRES ON 2/21/94

STATE OF VIRGINIA
CITY OF HAMPTON, TO WIT:
IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE CITY AND STATE AFORESAID, ON THIS 16 DAY OF December, 1992, THIS MAP WAS PRESENTED AND ADMITTED TO RECORD AS THE LAW DIRECTS IN PLAT BOOK 10, PAGE 110.

TESTE: *John A. Supton, Clerk*
BY:

COMMON AREA = 5.835 ACRES
LOT AREA = 3.244 ACRES
TOTAL AREA = 9.079 ACRES



10/110
WESTVIEW LAKES '3C' PHASE II
1 OF 3

**WESTVIEW LAKES
SECTION THREE-C
PHASE II
HAMPTON, VIRGINIA**

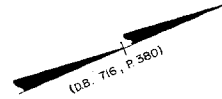
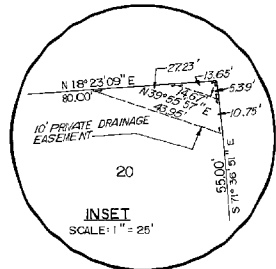
**BALDWIN
& GREGG**
ENGINEERS • SURVEYORS • PLANNERS
NORFOLK, VIRGINIA

SCALE: 1" = 50'

DATE: JULY 24, 1992
JOB NO. 2405L15 SHEET 2 OF 3

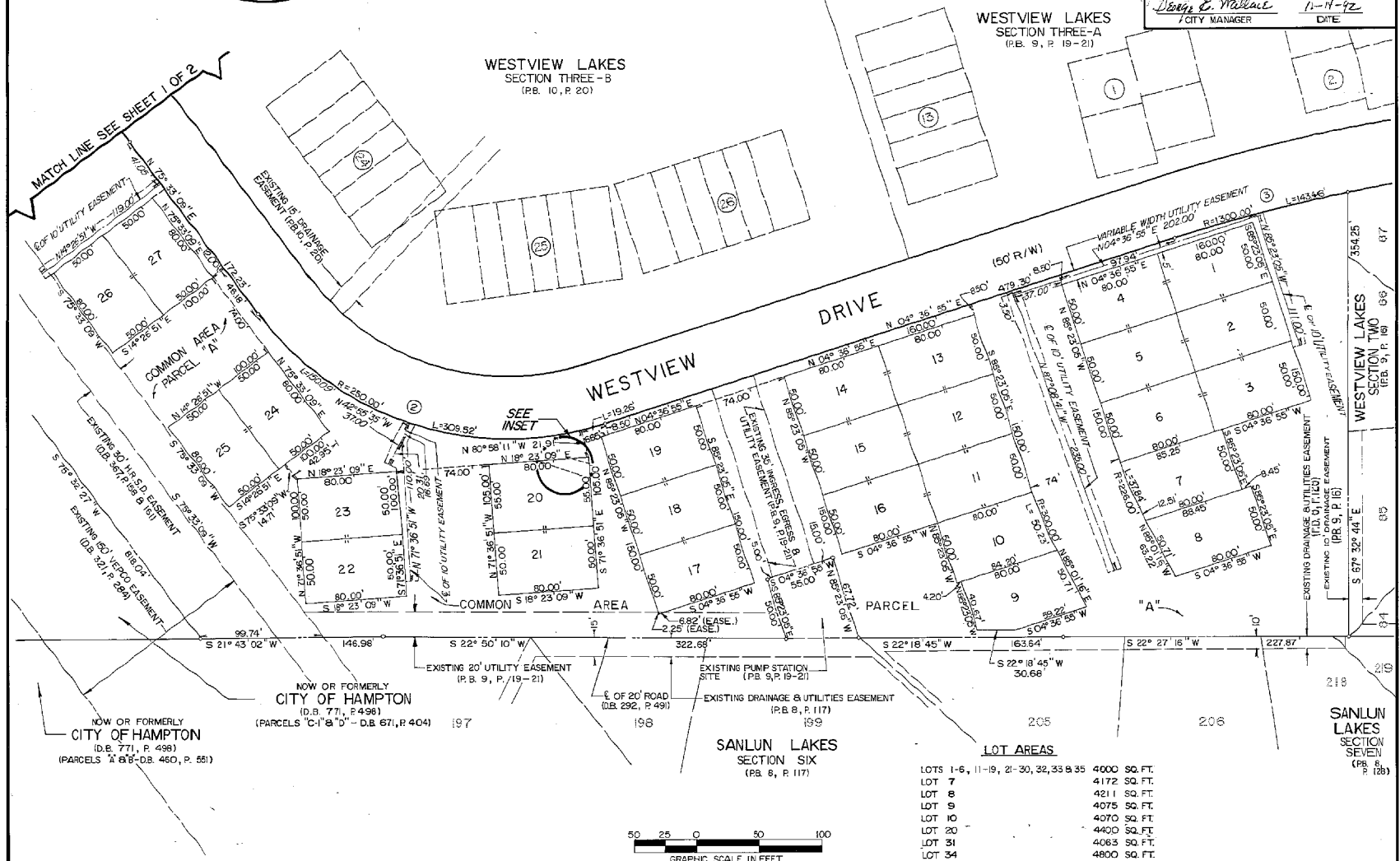
APPROVED FOR CITY OF HAMPTON

David E. Wallace 11-14-92
CITY MANAGER DATE



**WESTVIEW LAKES
SECTION THREE-B
(P.B. 10, P. 20)**

**WESTVIEW LAKES
SECTION THREE-A
(P.B. 9, P. 19-21)**



NOW OR FORMERLY
CITY OF HAMPTON
(D.B. 771, P. 498)
(PARCELS A 68-D.B. 460, P. 551)

NOW OR FORMERLY
CITY OF HAMPTON
(D.B. 771, P. 498)
(PARCELS C 1-D 0-D.B. 671, R 404)

**SANLUN LAKES
SECTION SIX
(P.B. 8, P. 117)**

LOT AREAS

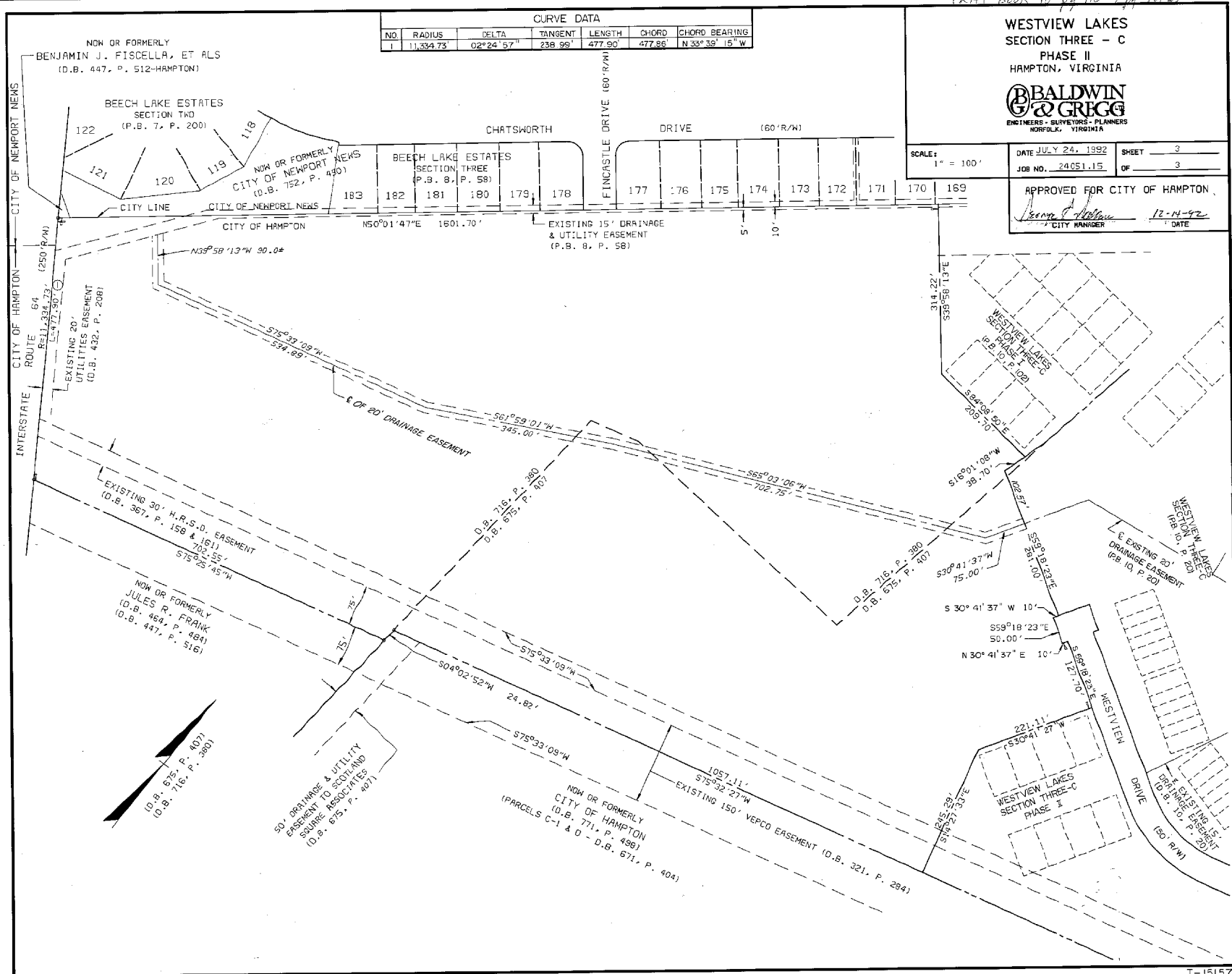
LOTS 1-6, 11-19, 21-30, 32, 33 & 35	4000 SQ. FT.
LOT 7	4172 SQ. FT.
LOT 8	4211 SQ. FT.
LOT 9	4075 SQ. FT.
LOT 10	4070 SQ. FT.
LOT 20	4400 SQ. FT.
LOT 31	4063 SQ. FT.
LOT 34	4800 SQ. FT.

**SANLUN LAKES
SECTION SEVEN
(P.B. 8, P. 128)**



10/110
WESTVIEW LAKES 3C PHASE 2
3 OF 3

PLAT BOOK 12 pg 110 (pg 3 of 3)



Westview Lakes Homeowner's Association, Inc.

Playground Rules

By using the playground, you agree to the Rules below as well as all rules posted at the playground. The Board of Directors may revoke an individual's use of the playground for violation of these rules or close the playground for continued violation of these rules.

1. The playground is private property, for the exclusive use of Westview Lakes Resident's and their guests- **at their own risk**. Unit Owner's are responsible for use of the playground by their residents, children and guests at all times.
2. The park is open daily from 9:00am-Sunset.
3. For safety reasons, the playground equipment shall only be used by children 12 years old and under.
4. No beverages, food or pets allowed in the mulched playground area. All trash must be properly disposed of.
5. Shoes are required in the park at all times.
6. Do not play on the equipment when wet.
7. No rough play, fighting, yelling or cursing allowed.
8. Vandalism or graffiti offenses to the playground equipment, bleachers or any other association property shall be prosecuted.
9. No smoking or consumption of alcoholic beverages allowed in the park.
10. Use equipment properly. Do not attach items to the equipment or otherwise modify the equipment in any way, as doing so may result in damage to the equipment or cause injury.

Report violations of the playground rules, or other playground concerns to Management at 757-873-1800. Emergencies or suspicious activity in the park should be reported to the Hampton Police by dialing 911.

Basketball Court Rules

1. The court may be used only between the hours of 9:00 AM and sunset, seven days a week.
2. Children under the age of 12 must be accompanied by an adult.
3. No damaging or hanging from the rims, nets or goal supports.
4. Lowering the basketball hoop is not allowed; the hoop height is set at 10 feet and shall remain at that setting at all times
5. Westview Lakes homeowners are responsible for any and all damages resulting from the use of the facility caused by themselves, their residents, or their invited guests, and for any and all damages resulting from an unauthorized organized team game in which the homeowner or their household or guests participate, including but not limited to personal injury, damage to the court and adjacent landscape and play equipment.
6. The use of the basketball court is reserved for owners, their guest and/or residents.
7. A homeowner or resident must accompany their guest(s) for the duration of any play.
8. No alcoholic beverages may be consumed within the court or within any association property. All waste must be properly disposed of. No smoking is allowed within the court.
9. Roughhousing, fighting, loud music, or other modes or disturbance or nuisance is prohibited. Dogs must be leashed and under control at all times.
10. Profanity is prohibited.
11. Vehicles are not allowed to be parked on the grass or court at any time, all residents and guest must park on the street next to the curb when parking at the park.
12. The basketball court may be used only for playing basketball. Any other activities are prohibited.
13. If any of these rules are violated Westview Lakes HOA Board of Directors and/or Management can remove the basketball hoop and secure the park indefinitely without notice.

Legend

- Parcels
- Lot Lines
- 2012 Contours 1ft
- Boundary



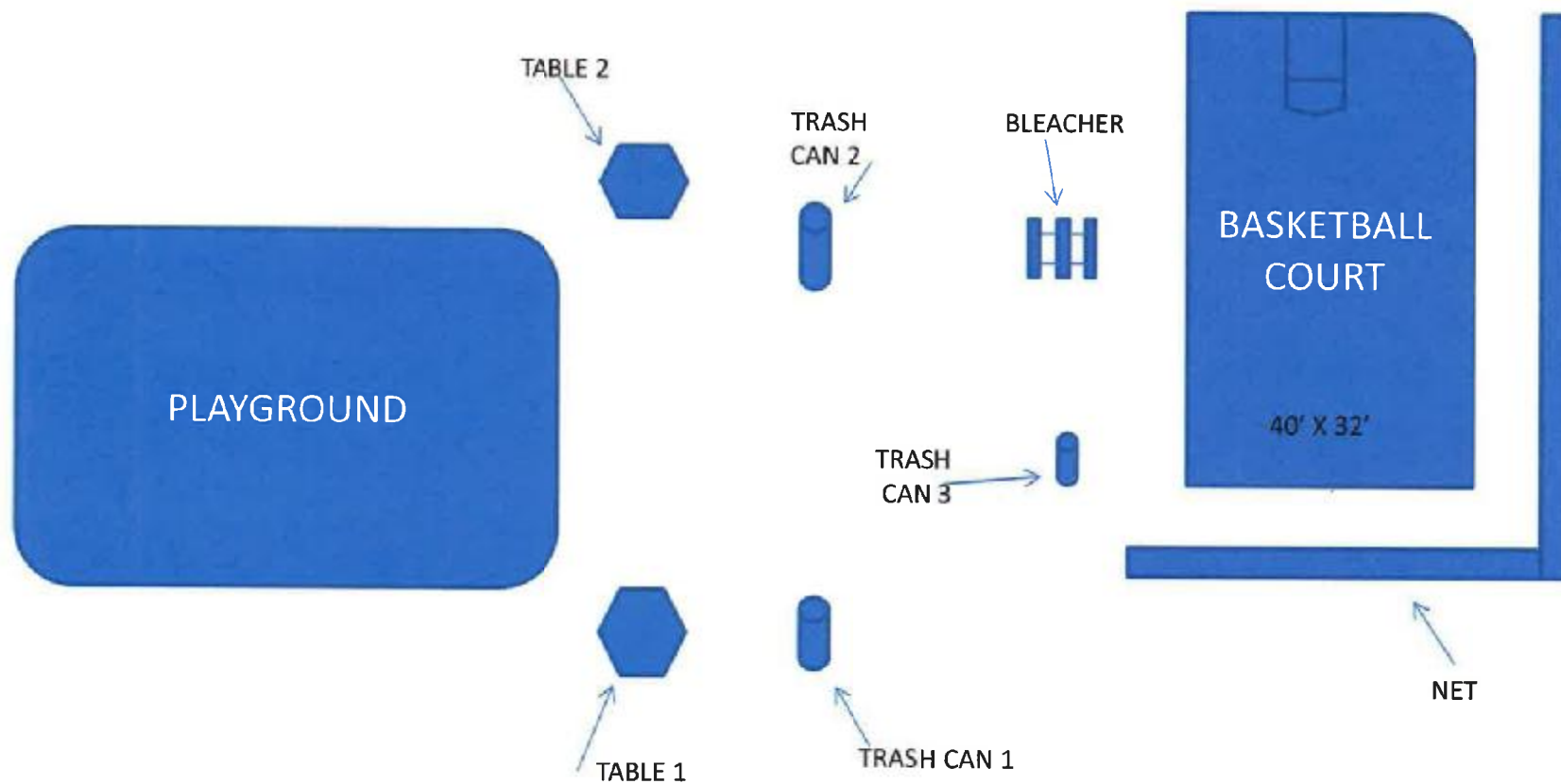
Feet
0 20 40 60 80
Map Scale: 1:1,128

Title:

Date: 1/26/2015

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Hampton is not responsible for its accuracy or how current it may be.

Mallard COURT



Wild Duck COURT

WESTVIEW DR.

WILD DUCK COURT

NET

WESTVIEW DR.

BASKETBALL COURT



BLEACHERS



TRASH
CAN

Westview Lakes Homeowners' Association, Inc.

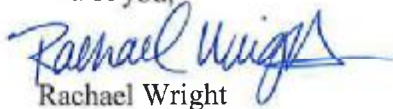
April 22, 2015

RE: Credits for Parking

To whom it may concern,

The board and community of Westview Lakes Homeowners' Association is requesting credits for parking. Section 19.8, Part 5b of the zoning ordinance states, "Adherence to the applicable parking standards is not necessary and will result in excess parking spaces because there will be a high level of pedestrian, carpool, and/or public transit traffic serving the use." The area located in front of the playground has enough room for 2-3 cars to park legally. This area is used by residents within the association and most either walk to the playground area or ride their bikes.

Thank you,



Rachael Wright
Community Manager

Community Group, Inc.
11818 Rock Landing Drive, Ste. 204
Newport News, VA 23606
757-873-1800/Fax:757-873-3441



May 7, 2015

Rachael Wright
Community Manager
Community Group, Inc.
11818 Rock Landing Dr.
Suite 204
Newport News, VA 23606

Dear Ms. Wright:

I am in receipt of your letter dated April 22, 2015 wherein you request parking credits for your playground. Pursuant to section 19-8 (5)(b) of the City of Hampton Zoning Ordinance, parking credits can be granted when, "adherence to the applicable parking standards is not necessary and will result in excess parking spaces because there will be a high level of pedestrian, carpool and/or public transit traffic serving the area".

I have reviewed your letter that states that the area will be used by the residents within the association who will either walk to the playground or ride their bikes, and forwarded same to our Director of Public Works and Director of Community Development; they have recommended the grant of the parking credits. Therefore, I will grant you a credit for the 5 parking spaces that are required per the Zoning Ordinance.

This response is limited to those facts presented by the landowner for this specific project. Any modification of facts or information, and any additional facts or

Community Development Department, Development Services Division
22 Lincoln Street, 3rd floor | Hampton, Virginia 23669
www.hampton.gov | Hampton's 311: 757.727.8311 | O.757.728.2444

information that arise after the date of this determination letter will render the determination void.

Pursuant to Section 25-6 of the City of Hampton, Zoning Ordinance, you have the right to appeal this notice of zoning violation, determination or written order within thirty (30) days to the Board of Zoning Appeals. An application for appeal can be obtained at the City of Hampton Community Development Department, 22 Lincoln St, third floor. The fee for an appeal 100.00 dollars for residential uses and 250.00 dollars for commercial uses. If an appeal is not filed within thirty (30) days of the above date, you shall lose the right to appeal and this decision shall be final and unappealable.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Shapiro', with a long horizontal line extending to the right.

Steven Shapiro, Zoning Administrator

Use Permit Application No. 15-00005

Westview Lakes Homeowners Association, Inc.: Park/Playground, Active
Westview Dr. [Portion of LRSN 5000487], Hampton, VA, 23666

. Issuance of Permit

The Use Permit applies only to the portion of "Common Area Parcel A" outlined in Exhibit A "Westview Lakes Subdivision Plat" and is not transferable to another location.

. Hours of Operation

The hours of operation for the playground shall be from 9:00 AM to 8:00 PM seven days a week.

3A. Park Facilities (Staff Recommendation)

All active recreational uses which abut any parcel in any one- or two-family residential zoning district or any parcel containing any one- or two-family or duplex dwelling unit shall be setback a minimum of 50' from all property lines shared by any abutting parcel as described above.

3B. Park Facilities (Planning Commission Recommendation)

All active recreational ~~uses-facilities installed after the date of approval of this use permit~~ which abut any parcel in any one- or two-family residential zoning district or any parcel containing any one- or two-family or duplex dwelling unit shall be setback a minimum of 50' from all property lines shared by any abutting parcel as described above.

4. Lighting

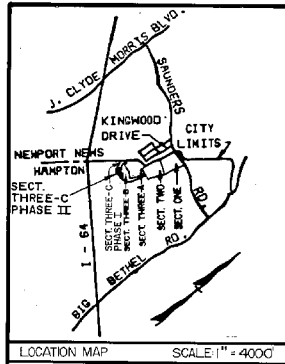
All outdoor lighting shall be focused downward and inward in a way that prevents spillover onto adjacent parcels.

. Revocation

Failure to comply with any conditions of this Use Permit shall constitute a violation of the provisions of Chapter 14 of the Zoning Ordinance and shall be cause for revocation of the use permit by City Council.

. Nullification

- a. The Use Permit shall become null and void if the use is not established within twelve months of the date of approval by the City Council.
- b. The Use Permit shall become null and void if the facility is not used for the permitted use for a period of two years.



CURVE DATA					
NO.	RADIUS	DELTA	TANGENT	LENGTH	CHORD
1	250.00'	45° 08' 28"	103.91'	196.97'	191.91'
2	250.00'	70° 56' 14"	178.12'	309.52'	290.13'
3	1300.00'	06° 19' 22"	71.80'	143.46'	143.35'

Exhibit A - Westview Lakes Subdivision Plat

WESTVIEW LAKES
SECTION THREE-C
PHASE II
HAMPTON, VIRGINIA

BALDWIN & GREGG
ENGINEERS • SURVEYORS • PLANNERS
NORFOLK, VIRGINIA

SCALE: 1" = 50'
DATE: JULY 24, 1992
JOB NO.: 24051.15
SHEET: 1 OF 3

APPROVED FOR CITY OF HAMPTON
[Signature] 12-24-92
CITY MANAGER DATE

THIS IS TO CERTIFY THAT TITLE TO THE LAND EMBRACED IN THIS SUBDIVISION IS IN THE NAME OF SCOTLAND SQUARE ASSOCIATES, A VIRGINIA GENERAL PARTNERSHIP, AND WAS ACQUIRED FROM BENJAMIN J. FISCELLA & ROBERT J. FISCELLA, BY DEED DATED APRIL 8, 1985 AND RECORDED IN DEED BOOK 716, PAGE 300, DULY RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF HAMPTON, VIRGINIA.

TO ALL PARTIES INTERESTED IN TITLES TO PREMISES SURVEYED, WE HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AS PER RECORDED DESCRIPTION AND IS CORRECT AND THERE ARE NO ENCROACHMENTS EITHER WAY ACROSS PROPERTY LINES EXCEPT AS SHOWN. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL THE REQUIREMENTS AS SET FORTH IN THE ORDINANCE FOR APPROVAL OF PLATS OF SUBDIVISION FOR RECORDED IN THE CITY OF HAMPTON HAVE BEEN COMPLIED WITH.

BALDWIN & GREGG, LTD.

BY: *[Signature]*

THIS PLAT OF SUBDIVISION INCLUDING THE DEDICATION OF STREETS, DRAINAGE, AND UTILITY EASEMENTS IS WITH FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS.

SCOTLAND SQUARE ASSOCIATES,
A VIRGINIA GENERAL PARTNERSHIP

BY: NEWJEFF CORPORATION, GENERAL PARTNER

[Signature]
A. R. CAPLAN, PRESIDENT

BY: WESTVIEW BUILDING CORPORATION, GENERAL PARTNER

[Signature]
R. S. COLLINS, PRESIDENT

I, *[Signature]*, NOTARY PUBLIC IN AND FOR THE CITY AND STATE AFORESAID, DO HEREBY CERTIFY THAT A. R. CAPLAN, PRESIDENT OF NEWJEFF CORPORATION AND R. S. COLLINS, PRESIDENT OF WESTVIEW BUILDING CORPORATION, WHOSE NAMES ARE SIGNED TO THE FOREGOING WRITING HAVE DULY ACKNOWLEDGED THE SAME BEFORE ME IN MY CITY AND STATE AFORESAID.

GIVEN UNDER MY HAND THIS 30 DAY OF December, 1992.

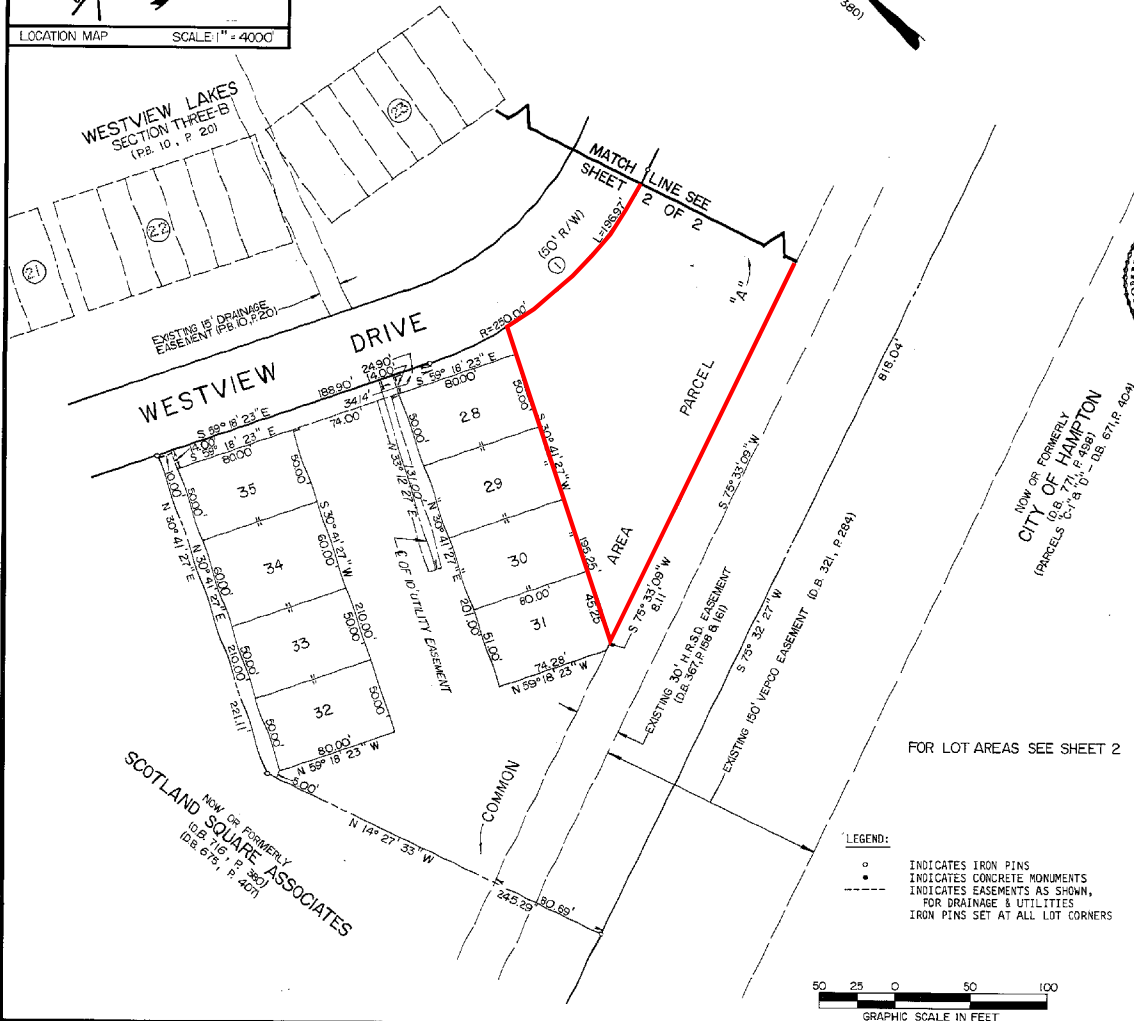
[Signature]
NOTARY PUBLIC

MY COMMISSION EXPIRES ON 2/21/94

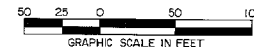
STATE OF VIRGINIA
CITY OF HAMPTON, TO WIT:
IN THE CLERK'S OFFICE OF THE CIRCUIT COURT FOR THE CITY AND STATE AFORESAID, ON THIS 17 DAY OF December, 1992, THIS MAP WAS PRESENTED AND ADMITTED TO RECORD AS THE LAW DIRECTS IN PLAT BOOK 10, PAGE 110.

TESTE: *[Signature]*
BY: *[Signature]*

COMMON AREA = 5.835 ACRES
LOT AREA = 3.244 ACRES
TOTAL AREA = 9.079 ACRES



LEGEND:
• INDICATES IRON PINS
• INDICATES CONCRETE MONUMENTS
--- INDICATES EASEMENTS AS SHOWN, FOR DRAINAGE & UTILITIES
IRON PINS SET AT ALL LOT CORNERS



**WESTVIEW LAKES
SECTION THREE-C
PHASE II**
HAMPTON, VIRGINIA

**BALDWIN
& GREGG**
ENGINEERS • SURVEYORS • PLANNERS
NORFOLK, VIRGINIA

SCALE: 1" = 50'

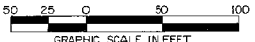
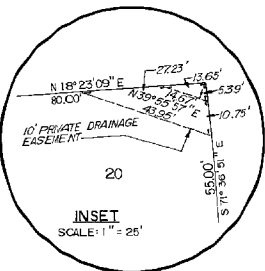
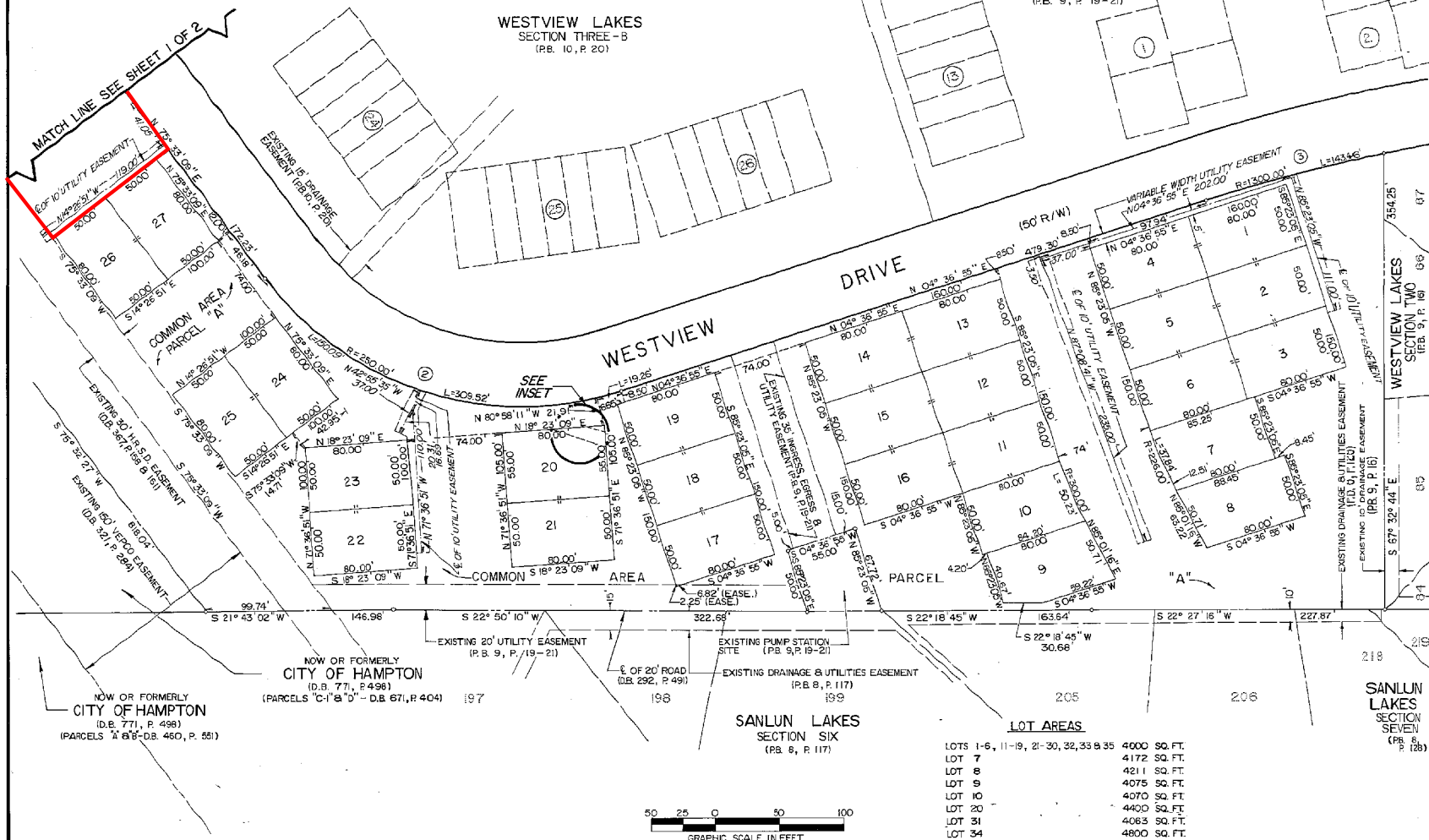
DATE: JULY 24, 1992
JOB NO. 2405115 SHEET 2 OF 3

APPROVED FOR CITY OF HAMPTON

David E. Wallace 11-14-92
CITY MANAGER DATE

**WESTVIEW LAKES
SECTION THREE-B
(P.B. 10, P. 20)**

**WESTVIEW LAKES
SECTION THREE-A
(P.B. 9, P. 19-21)**



LOT AREAS

LOTS 1-6, 11-19, 21-30, 32, 33 & 35	4000 SQ. FT.
LOT 7	4172 SQ. FT.
LOT 8	4211 SQ. FT.
LOT 9	4075 SQ. FT.
LOT 10	4070 SQ. FT.
LOT 20	4400 SQ. FT.
LOT 31	4063 SQ. FT.
LOT 34	4800 SQ. FT.

**SANLUN LAKES
SECTION SIX
(P.B. 8, P. 117)**

AT A PUBLIC HEARING IN A REGULAR MEETING OF THE HAMPTON PLANNING COMMISSION HELD IN THE COUNCIL CHAMBERS, CITY HALL, HAMPTON, VIRGINIA, ON THURSDAY, JUNE 4, 2015 AT 3:30 P.M.

- WHEREAS:** the Hampton Planning Commission has before it this day a proposal by the Westview Lakes Homeowners Association, Inc. for an active park/playground located at Westview Dr. [LRSN 5000487];
- WHEREAS:** Westview Lakes HOA has operated a playground without a use permit at this location since 2000, and a basketball court was installed in 2014;
- WHEREAS:** the property is zoned Multiple Residence (R-M) District, which allows for the operation of an active park/playground subject to approval of a use permit;
- WHEREAS:** the Hampton Community Plan (2006, as amended) provides policies calling for community interaction, access to recreational facilities, and promoting compatibility among differing land uses;
- WHEREAS:** staff recommended six (6) conditions be attached to the use permit addressing hours of operation, the location of active recreational uses, and lighting;
- WHEREAS:** discussion at the meeting focused on both positive and negative impacts of the basketball court on the neighborhood; and
- WHEREAS:** the Hampton Planning Commission recommended amending Condition 3 to exempt the basketball court from the requirement that active recreational uses, such as basketball, be set back 50' from residential properties;

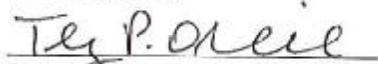
NOW, THEREFORE, on a motion by Commissioner Southall and seconded by Commissioner Williams,

BE IT RESOLVED that the Hampton Planning Commission recommends to City Council approval of Use Permit Application No. 15-00005, subject to six (6) conditions.

A roll call vote on the motion resulted as follows:

AYES:	Southall, Williams, Campbell, McCloud, LaRue
NAYS:	Schmidt
ABST:	None
ABSENT:	Bunting

A COPY; TESTE:



Terry P. O'Neill
Secretary to Commission

STAFF EVALUATION

To: City Council

Prepared By: Matt Smith

727-6077

Reviewed By: Keith Cannady, AICP
Sharon McSmith, CAP

728-5239

728-5240

Case No.: Use Permit Application No. 15-00005

Date: 7/8/2015

General Information

Applicant Rachael Wright

Owner Westview Lakes Homeowners Association, Inc.

Location Westview Dr. (LRSN: 5000487)



Requested Action Use Permit to allow for active park/playground.

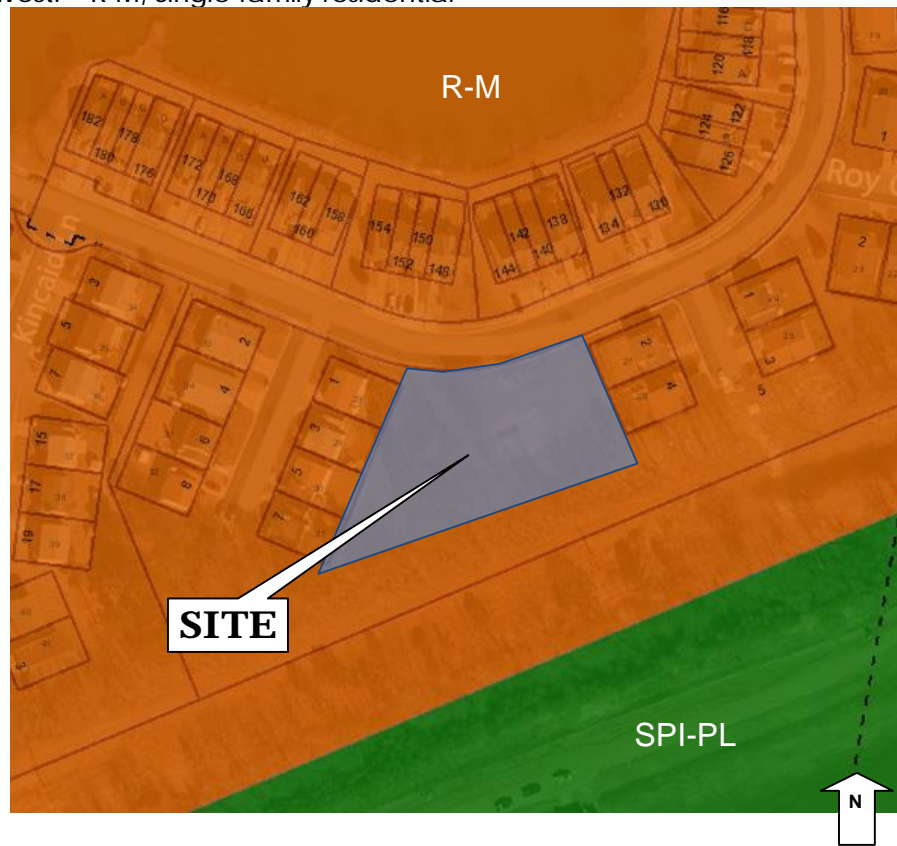
Description of Proposal The site has been maintained as a playground by the Westview Lakes Homeowners Association (HOA) for use by residents for roughly 15 years. Parks/playgrounds are permitted in the R-M District with a use permit. The applicant is seeking a use permit for an existing playground and basketball court on common area owned by the HOA.

Existing Land Use Active park/playground

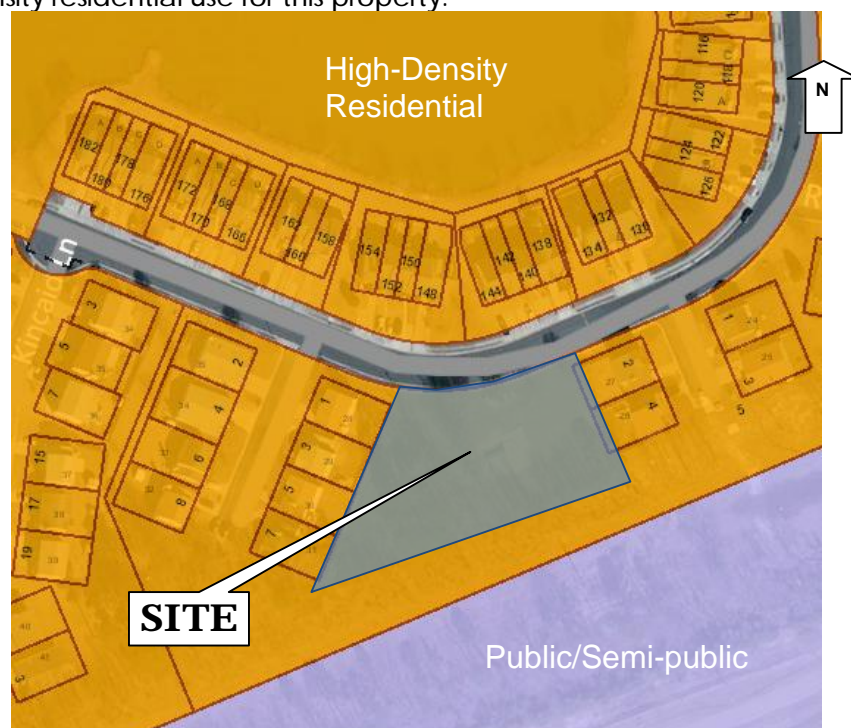
Zoning Multiple Residence (R-M) District

**Surrounding Land Use
and Zoning**

North: R-M, Single-family residential
South: SPI-PL, Landfill
East: R-M, Single-family residential
West: R-M, Single-family residential

**Public Policy**

The Hampton Community Plan (2006, as amended) recommends high-density residential use for this property.



An element of the Community Plan's vision "To Make Hampton the Most Livable City in Virginia" includes providing an environment where children and youth can thrive.

Policies and objectives supporting this vision include:

LU-CD Objective 3: Promote compatibility and synergy among different land uses.

LU-CD Policy 7: Safeguard the integrity of existing residential neighborhoods.

LU-CD Policy 23: Promote family, school, and community interaction at the neighborhood level.

LU-CD Policy 26: Promote access to educational, social, civic, recreational, and employment opportunities particularly for youth and seniors.

CF Policy 26: Continue to provide parks and recreation facilities that promote passive and active recreational, educational, and cultural opportunities for all residents and visitors.

CF Policy 29: Provide parks and recreational facilities that contribute to the health and safety of children and youth. Encourage physical activity and pedestrian and bike access to reduce the dangers of traffic and the risks associated with a sedentary lifestyle.

Zoning History

The subdivision was developed under one rezoning (RZ 1084) and a series of residential – open space use permits (UP 579, UP 593, UP 763, UP 799, UP 844, UP 935). Generally, these actions permitted a clustering of homes not typically allowed by the Zoning Ordinance in exchange for dedicated open space.

Applicable Regulations

The R-M district allows for active parks/playgrounds subject to securing a use permit. The purpose of this use permit is to identify the operational characteristics of the proposal and establish the conditions under which the facility will be operated. This action is necessary to ensure the safety and welfare of the public as well as minimize project impacts on the adjoining properties.

Traffic/Parking

The Zoning Ordinance requires that active parks/playgrounds have five on-site parking spaces per acre of facility. The site has no on-site parking. Under certain circumstances, the zoning administrator may issue parking credits to be counted toward some or all of a use's required parking. The applicant applied for parking credits under a provision of the Zoning Ordinance which states that, "Adherence to the applicable parking standards is not necessary and will result in excess parking spaces because there will be a high level of pedestrian, carpool, and/or public transit traffic serving the use". As the majority of playground users do not use a vehicle to access the playground, the zoning administrator issued credits for the five parking spaces that are required by the Zoning Ordinance.

Schools

This proposal does not impact city schools.

Environmental

There are no known environmental concerns on this site.

Public Safety

The Hampton Police Division provided reports of for calls for service logged to blocks nearby the park/playground for the years 2013 and 2014.

The basketball court was installed in May 2014. Calls for service possibly related to the use of the basketball court for the period of June to December of 2014 (after the court was installed) were compared to calls for service during the same period in 2013.

17 possibly related calls for service were logged during this seven month period in 2013. 24 similar calls for service were logged for this same period in 2014.

Community Meeting

A town hall meeting was held by the HOA on May 11th. 13 residents and 5 HOA board members were present.

Residents discussed complaints of drug use, profanity, noise, trash, and loitering associated with the basketball court. Some residents said this activity diminished the enjoyment of their property and made it uncomfortable for parents and children to use the playground equipment. Residents also discussed what they perceived to be an ongoing problem of unacceptable youth behavior and inadequate recreational opportunities for youth.

Some residents stated that they thought the basketball court provided a positive outlet for neighborhood youth and that it should remain.

In response to resident concerns, the property management firm used by the Westview Lakes HOA sent out a survey regarding use of the playground and basketball court to 310 households. 53 responses were received.

Survey Results:

- 66% of respondents were in favor of keeping both the playground and court open.
 - 19% of respondents were in favor of keeping the playground open, but closing the court.
 - 2% of respondents were in favor of keeping the court open, but closing the playground.
 - 13% of respondents thought both the playground and court should be closed.
-

Analysis

Westview Lakes is a subdivision of roughly 300 homes located off of Saunders road in northwest Hampton that was developed in the 1980s and early 1990s. The subdivision was developed under a Residential – Open Space (R-OS) use permit, which allowed the clustering of homes in exchange for the dedication of “open space”, or undeveloped land.

These vacant parcels of open space existed in such form until approximately 2000 when the Westview Lakes HOA erected playground equipment on a portion of open space known as "Common Area Parcel A", establishing use of the parcel as an active park/playground. Hampton's Zoning Ordinance permits active parks/playgrounds in the Multiple Residence (R-M) District with the approval of a use permit. Since the installation of playground equipment in 2000, the portion of "Common Area Parcel A" located between Mallard Ct. and Wild Duck Ct. has been used as a playground/park without approval of a use permit.

In May 2014, a concrete pad and basketball hoop were installed on "Common Area Parcel A". The existence of the playground came to the attention of city staff through complaints to the Westview Lakes HOA and city about disturbances caused by users of the basketball court. A city codes inspector was sent to investigate the complaints and a Notice of Zoning Violation was issued to the HOA stating that use of common area as a park/playground must cease pending final consideration of a use permit by City Council. Staff has since received additional indications of resident opposition to the basketball court including emails and a petition with 37 signatures.

The park/playground is roughly .85 acres and located immediately adjacent to single family residence homes. The National Recreation and Park Association, through its 1996 *Park, Recreation, Open Space, and Greenway Guidelines (Guidelines)*, provides park classification and facility guidelines to assist localities with park planning. The *Guidelines* define a mini park as one less than one acre in size, with a one quarter mile service radius, that is used to address limited, isolated, or unique recreational needs. This description is appropriate to describe the Westview Lakes park/playground. The City of Hampton's Parks and Recreation Master Plan (1997) begins its park classification with 5-to-20-acre "neighborhood facilities", however, many localities use the *Guidelines* to classify mini parks as those with passive recreation facilities including picnic tables, benches, and play areas for small children. Some localities do include active uses such as playing courts as appropriate facilities for mini parks.

A vision of the Hampton Community Plan (2006 as amended) is to provide an environment where children and youth can thrive. Policies supporting this vision include those calling for community interaction, access to recreational facilities, and the provision of parks and recreation facilities that contribute to the health and safety of children and youth. The Community Plan also calls for promoting compatibility among differing land uses and safeguarding the integrity of residential neighborhoods. The Westview Lakes park/playground generally aligns with these policies. Recommended conditions attached to the use permit can further bring the park/playground into alignment with the Community Plan.

If this application is approved, staff recommends attaching conditions that address hours of operation of the park/playground and the location of park facilities. At the Planning Commission meeting, Commissioners proposed a change to the staff recommended conditions.

Staff recommends approval of Use Permit Application #15-00005 with 6 conditions.

The Planning Commission recommends approval of Use Permit Application #15-00005 with 6 conditions subject to amending Condition 3. The amended condition is labeled 3B in the attached conditions.

Use Permit Application No. 15-00005

Westview Lakes Homeowners Association, Inc.: Park/Playground, Active
Westview Dr. [Portion of LRSN 5000487], Hampton, VA, 23666

1. Issuance of Permit

The Use Permit applies only to the portion of "Common Area Parcel A" outlined in Exhibit A "Westview Lakes Subdivision Plat" and is not transferable to another location.

2. Hours of Operation

The hours of operation for the playground shall be from 9:00 AM to 8:00 PM seven days a week.

3A. Park Facilities (Staff Recommendation)

All active recreational uses which abut any parcel in any one- or two-family residential zoning district or any parcel containing any one- or two-family or duplex dwelling unit shall be setback a minimum of 50' from all property lines shared by any abutting parcel as described above.

3B. Park Facilities (Planning Commission Recommendation)

All active recreational ~~uses~~ facilities installed after the date of approval of this use permit which abut any parcel in any one- or two-family residential zoning district or any parcel containing any one- or two-family or duplex dwelling unit shall be setback a minimum of 50' from all property lines shared by any abutting parcel as described above.

4. Lighting

All outdoor lighting shall be focused downward and inward in a way that prevents spillover onto adjacent parcels.

5. Revocation

Failure to comply with any conditions of this Use Permit shall constitute a violation of the provisions of Chapter 14 of the Zoning Ordinance and shall be cause for revocation of the use permit by City Council.

6. Nullification

a. The Use Permit shall become null and void if the use is not established within twelve months of the date of approval by the City Council.

b. The Use Permit shall become null and void if the facility is not used for the permitted use for a period of two years.

Use Permit # 15-00005



Westview Dr.
Westview Lakes Homeowner Association

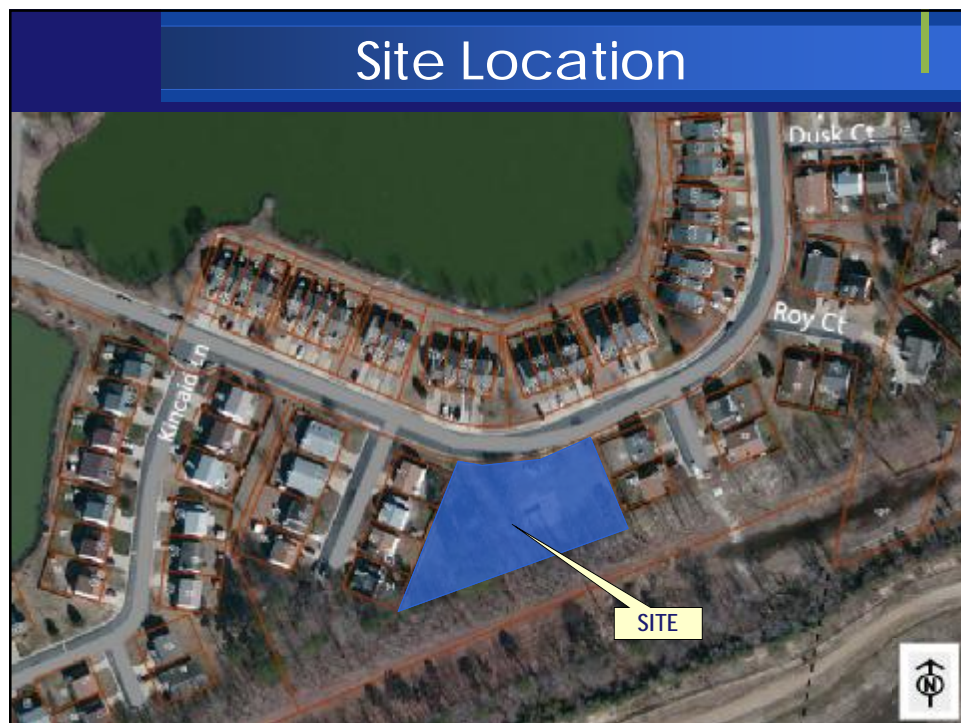
Hampton City Council
July 8, 2015

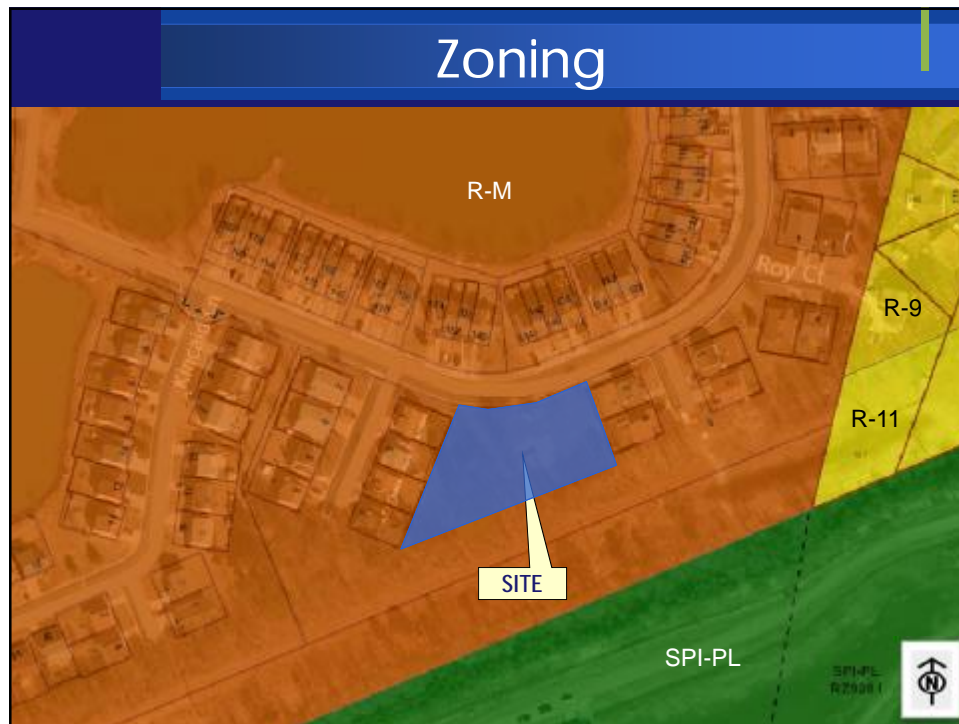
Application

Use Permit for the operation of an
active park/playground

Hampton City Council
July 8, 2015

Use Permit No. 15-00005





Public Policy

HAMPTON COMMUNITY PLAN
Planning for the 21st Century City of Hampton

- ✦ Promote compatibility among different land uses
- ✦ Safeguard integrity of residential neighborhoods
- ✦ Promote family, school, and community interaction
- ✦ Promote access to recreational opportunities for youth
- ✦ Provide parks and recreational facilities that contribute to health and safety, encourage physical activity, and are accessible to pedestrians and bicyclists

Hampton Community Plan (2006, as amended).

Hampton City Council
July 8, 2015

Use Permit No. 15-00005

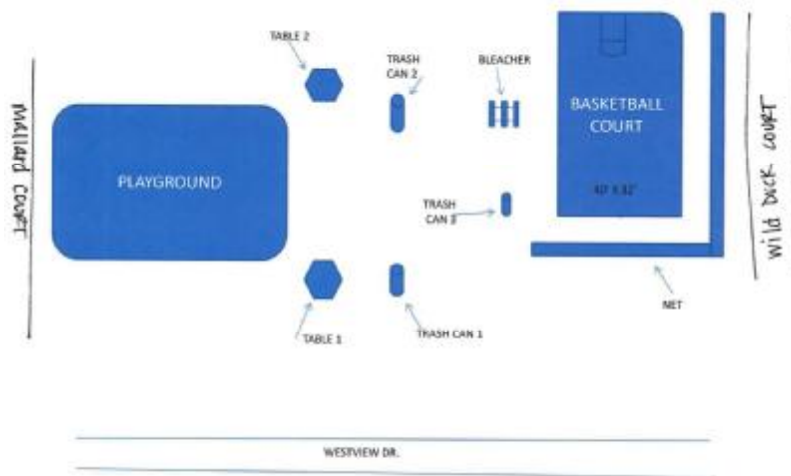
Proposal

Active Park/Playground
Playground Equipment
Basketball Court

Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Site Characteristics



Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Site Characteristics



Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Development History

- ✦ ~300 parcel subdivision
- ✦ Developed in the 1980s and 1990s under a Residential – Open Space use permit
- ✦ Began to be used as a playground around 2000
- ✦ Basketball court installed in 2014

Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Community Meeting

- ✦ Held May 11th. 13 residents and 5 HOA board members attended
- ✦ General agreement that unwanted activity was associated with the basketball court. This activity significantly affected nearby properties.
- ✦ HOA survey found that:
 - ✦ 66% of respondents favored keeping both playground and court
 - ✦ 19% favored keeping only the playground
 - ✦ 2% favored keeping only the court
 - ✦ 13% favored closing both the playground and court

Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Conditions

- ✦ Hours: 9:00Am to 8:00PM
- ✦ Limit location of active recreation facilities
 - ✦ Staff: 50' setback of all active recreational uses
 - ✦ Planning Commission: 50' setback with exception for existing basketball court
- ✦ Lighting

Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Recommendations

Staff recommends approval of
Use Permit # 15-00005 with 6 conditions

The Planning Commission recommends
approval of Use Permit # 15-00005 with
6 conditions subject to amending
Condition 3

Hampton City Council
July 8, 2015

Use Permit No. 15-00005

Public Comments

From: [jennifer williams](#)
To: [Smith, Matthew](#)
Cc: detrick.williams@langley.af.mil
Subject: WestView Lakes Basketball Ball Court Summation
Date: Monday, February 23, 2015 11:29:55 AM
Attachments: [3WDC Response to Basketball Court Complaint 8.13.14.pdf](#)
[2012 Westview Lakes Homeowner Rules and Regulations FINAL.pdf](#)
[basket.pdf](#)
[COMPLAINT FORM Basketball Courts.pdf](#)
[Declaration of Covenants.pdf](#)
[email westview01.pdf](#)
[email westview02.pdf](#)
[email westview03.pdf](#)
[WLHA Articles of Incorporation.pdf](#)
[WLHA Bylaws.pdf](#)

Dear Planning Commission and City Council,

I am the owner of 3 Wild Duck Court Hampton, VA 23666, and my home has been taken hostage by the activity that occurs at the basketball court WestView Lakes Home Owners Association has installed behind my property. The enjoyment of my home, especially during the summer is impossible, and makes the home unlivable by the introduction of this unpermitted recreational use.

I asked the current board why they chose this area right behind my fence, and I was told that it would have been too expensive to cut down a few of the trees to place the structure further away from the homes. The insurance would have cost too much to place it elsewhere so I am just the unlucky person that has to deal with this situation.

I have a definite concern of this use negatively impacting my property value when it comes time to sell my home due to the activity it is drawing to our neighborhood, and the fact it is a permanent structure less than 5 feet away from my back property line. Renters/home buyers are not going to choose to deal with this activity, which will limit my buyer/renter pool in the future. I myself, would not have purchased my home if this were installed behind the fence for fear of dealing with a nuisance.

I was never notified of the installation of this structure's location until they broke ground and laid the concrete. This board has the option to call a special meeting of the homeowners in the vicinity and failed to do so. They feel that they can do what they want, which shows by their lack of interest in acquiring the proper permit beforehand vice versa after the fact. Although, this is discussed on the board's minutes, I never received notification of such special meeting. I am very doubtful that it occurred. Additionally, when I requested copies of all the minutes in regards to the basketball court, the special meeting minutes were not included.

There are no documented survey results of the survey that they claimed to conduct of the homeowners in the vicinity. I know that they spoke with 2, 6, 8 Wild Duck, and since we were not home, they felt that we were not important enough to consult, although our home would be the most impacted.

They never provided the homeowners a site plan, of where this structure was going to be installed so I would question their site survey plan process. I have requested a copy of this on numerous occasions without successfully obtaining this information.

The installation and use of this basketball court has:

- 1) Introduced and encouraged nefarious activity behind my home such as increased foot traffic, drug activity, noise from basketballs, and unruly/unsupervised children using vulgar language.
- 2) The noise level produced by this use can be heard in any room of my home. The homes of 4-8 Wild Duck can hear the noise from their homes while trying to enjoy their front porches. I do not remember if they can hear it from the inside or not. If they are able to hear the noise from their front porches, please imagine what noise you can hear inside of my home.
- 3) Basketballs frequently have come over the fence, and we have had children coming over the fence to retrieve their items. We have incurred damage to our fence from this use/installation of this infrastructure. This damage has come from the children climbing over the fence into private property.
- 4) Westview Lakes HOA has not adequately controlled the area to prevent this from becoming a nuisance.

5) The home owners association has shown a lack of responsibility for the activity that occurs on this site, and passed the buck off on the City of Hampton Police Department. I have asked that they secure this area when it is not permitted to be used, ensure that it is used by residents only, and require adult supervision during use, and to this day this has not occurred. Mr. McEachin stated that a perimeter fence would not be adequate because he does not want to put children in cages. I guess when parents take their children to a swimming pool, they are placing their child in a cage. It is a safety mechanism and necessary to ensure the safety and security of the homeowners of Wild Duck and Mallard Court

Additionally,

6) Rachel Wright from the Community Association Management Group Office has not been honest about the Use Permit process, by telling me that planning commission hearing and city council meeting regarding this permit is only for the board of directors not the HOA members during the February meeting that I attended. This was after, I asked her to keep me informed of the process because I wanted to be involved. They are counting on the lack of member participation, and the lack of the HOA members knowing of this meeting. Ms Wright and Mr. McEachin have both denied my request to abate the structure from behind my home. Again, passing the buck off to the City to make a decision on whether or not the structure can stay.

7) The president of our HOA is Charles McEachin, who's address is 4 Christian Way, located in the vicinity of the original basketball court. WestView Lakes HOA Boards of Directors removed this basketball court due to the same type of activity that is occurring behind my home. He stated that the basketball court installation would prevent children from playing ball in the street. That is untrue, children are still placing portable goals at the edge of their driveways and playing ball in the streets. This is allowed since the goal itself is not in the street. The basketball court behind my home is being utilized a great deal by non-residents, which impacts the safety and security of my home and others.

8) 1 Wild Duck Court has been burglarized since the installation of this basketball court

9) The renters of 2 Wild Duck Court's car has been spray painted since this basketball court has been installed. Someone hit my car and drove off!

10) There has been suspicious people seen around my home and 1 Wild Duck Court when no one is there.

11) After speaking with our previous HOA president, Mr Richard Hill, It is my understanding that our members were under the impression that the board had the permission of the homeowners in the Wild Duck Court vicinity to install the basketball court.

The owner of 1 Wild Duck is AD Navy and is in and out, and I have been unable to reach him, the owners of 5 Wild Duck Court were made aware of the situation when I contacted them(they are standing behind me in this matter), I have not been able to speak with the listed owner of 7 Wild Duck, 2 Wild Duck Court was okay with the installation of the court (they were told that Hampton Police Department would be doing increased patrols and monitoring the area and that the area would be supervised), but now they are concerned due to the negative activity it has caused their renters, and 4-8 Wild Duck Court were against the installation of the court from the get go. We as the owners of 3 Wild Duck Court would have never agreed to the installation of this basketball court pad and goal behind our home, if we were adequately notified of these plans.

I would like to ask this planning commission and City Council to limit the use of this playground by disallowing the use of basketball, and possibly institute a green area rule to further prevent a conflict of mixed uses for the homeowners of Mallard and Wild Duck Court. Additionally, I would like to ask this commission/council to add a condition that would require the HOA to submit an amended or new application for adding additional recreational uses to this property.

At the February meeting, they discussed the possibility of adding adult resistance exercise equipment to this area, which they said would be installed in the vicinity of 7 Wild Duck Court. At this time, I have not seen any plans of this installation, and would like to check and see if it has been included in the site plan submitted with the Use Permit.

The use and enjoyment of this home and others should not be reliant upon the nefarious and noise activity of this basketball court, but that is exactly what is happening for 3 Wild Duck Court and surrounding properties.

Rather than finding common ground on this issue, this current board of directors would rather ignore and continue their unwillingness to compromise and help mitigate the impact that this structure's use has on my home and other homes.

I pray that this commission and council can provide some relief in this issue.

Thank You for your time and consideration in the matter. If you should have any questions for me, please feel free to contact me via 540-645-3551 or a jw8419@gmail.com

Very Respectfully,

Jennifer Lynn Williams

COMPLAINT FORM

This Form is available to all Association Owners as required by Section 55-530.E of the Code of Virginia, 1950, as amended ("Virginia Code"). Please

complete and return this Form to the Association's Manager for review at a regularly scheduled Board Meeting.

The Board will provide a written response to any submitted Association Complaint Form within a reasonable amount of time after the Board Meeting during which the Complaint is reviewed.

Member Name (Printed): Jennifer Williams

Member Name (Signature): 

Address: 3 Wild Duck Court Hampton, VA 23666

Date: 07/28/2014

Please outline and/or address your specific complaint in the space provided below. Should you need additional space, please attach additional typewritten pages. Please include copies of all applicable provisions of the Association's Declaration, Architectural Guidelines, Articles of Incorporation, Bylaws and / or Rules and Regulations to assist the Board in understanding your complaint. Please be sure to identify and / or attach the provisions of all specific provisions of the Virginia Code you believe may apply.

Complaint: I am corresponding with you to understand how the board of directors and Westview Lakes Homeowners Association deemed it necessary to install a basketball court directly behind the homes on Wild Duck Court. The basketball court is a nuisance to me and my husband since it is located directly behind our back fence, and we were not consulted on it being placed directly behind our home. We cannot even enjoy the serenity of our back yard due to vulgar language, yelling, balls bouncing and rift raft (ECT). The noise can be heard with all of the doors and windows closed, and is downright unbearable. A great deal of the time there are 10 plus unsupervised children behind our home. People utilize the basketball courts early in the morning and late at night, which has directly impacted our resting hours. I could not sleep last night because someone decided that they wanted to play basketball at 11pm. The basketball courts are directly impacting our home value because potential renters or home owners are not going to want to listen to the activity that occurs at the basketball courts. I am baffled as to why this recreational activity could not have been placed behind or before the playground area, or in a location on the common ground that does not inconvenience the homeowners of Wild Duck Court.

Westview Lakes Homeowners' Association, Inc.

August 13, 2014

Dear Jennifer Williams,

I would like to thank you for your remarks concerning the basketball court and I would like to address those concerns. We as a board have done our best to accommodate the needs of the HOA and yet maintain a balance of safety and practical use of common areas within the HOA. I understand your complaint of the court being in such close proximity to your home, but I must let you know that we did not come to the decision regarding the location of the court lightly or with haste. The following communications went out regarding the court:

- We mentioned the possibility of having a basketball court near the playground in 2013 during the town hall meeting for the HOA.
- We brought the subject up again at our annual meeting that same year.
- We (the Board of Directors) also walked around the area that surrounds the playground and asked the opinions of other homeowners concerning the basketball court including your home prior to installing the court. There may not have been anyone home at your house, but I can assure you we knocked on your door. There was a greater response in favor the basketball court being installed than to not have it installed.
- We also included a notification in a 2013 newsletter about the basketball court.
- And last but not least, we have HOA meetings on the second Monday of each month at 6:30 pm where all homeowners are welcome to come to the meetings. This is where we discussed the plans for the court for close to a year, as well as other matters concerning the HOA.

As you can see, there have been many opportunities for all to voice concerns about this basketball court, so I am not sure if your question on how the Board could make a decision to put a basketball court in its present location without prior notification to the homeowners in the immediate area is 100% accurate.

There is another issue that I would like to share with you which you may not be aware of that had a great influence on our decision, namely, the safety of our children. Children play basketball on almost every side street we have in the HOA. This lead to many complaints of cars being damaged as well as a serious safety issue of kids and basketballs going into the main streets. I personally almost hit a child chasing a ball in the street; I missed the child, but I did run over the ball. These complaints and safety concerns warranted our attention and were in need of resolution. When I asked the minority of homeowners who objected to the basketball court for suggestions on a solution, none were presented, therefore we moved forward.

Finally, to address your concern regarding noise, no one is allowed to be in the park before 9 am or after sunset. If there are people in the park outside of those hours, I suggest you call the police to have them removed. The rules governing the use of the court will be in our next newsletter and will also be posted by the court shortly. I also want to assure you that we are monitoring the impact of the court and are willing to intercede and stop the use of the court if warranted. You

Community Group, Inc.
11818 Rock Landing Drive, Ste. 204
Newport News, VA 23606
757-873-1800/Fax:757-873-3441

Westview Lakes Homeowners' Association, Inc.

may not be aware, but the rim was taken down by management for a period of time due to lack of cleanliness around the court. I hope I have addressed your concerns and again, we do appreciate your taking the time to articulate your concerns.

Respectfully,

Charles (Chuck) McEachin
President
Westview Lakes HOA

Community Group, Inc.
11818 Rock Landing Drive, Ste. 204
Newport News, VA 23606
757-873-1800/Fax:757-873-3441

Jennifer Williams
Mailing Address:
1010 Wythe Court
Falmouth, VA 22405
12/4/2014

Charles (Chuck) McEachin and Rachel Wright
President and HOA Manager, Community Association Group
Westview Lakes Homeowner's Association
11818 Rock Landing Drive, Ste. 204
Newport News, VA 23606

Dear Charles (Chuck) McEachin and Rachel Wright:

This letter is to continue my complaint against the basketball courts located behind my home at 3 Wild Duck Court Hampton, VA 23666. I have received your correspondence dated August 13th, 2014 on December 4th, 2014. The board of directors have not maintained practical use of the common area in this location. In your correspondence on the basketball court process, you have not made mention of a site survey report detailing why this particular site was chosen for the installation of basketball court structure. I did not see this in the newsletter or HOA provided website. I am formally requesting a copy of any independent site survey analysis that was done before this structure was built. My husband has also spoken with the available owners in the Wild Duck Court community, and he did not receive the response that you have implied. They must not have been home when you all made your rounds.

Virginia case law describes a private nuisance as follows:

"An activity which unreasonably interferes with the use and enjoyment of another's property." City of Newport News v. Hertzler, 216 Va. 587, 592, 221 S.E.2d 146, 150 (1976).

This structure is a private nuisance to the property address of 3 Wild Duck Court and surrounding properties for the following reasons:

- Continued noise from loud children and bouncing balls that can be heard inside of the home, and the simple act of activity is disruptive to the tranquility and

morality of the occupants of 3 Wild Duck Court, Hampton, VA 23666 and surrounding properties

- Including loud cursing, utter disrespect to the neighborhood, yelling during activity, and the utter lack of parental supervision.
- Use of this area by non-community members has definitely increased, and has not been adequately monitored by the association and board members.
- Suspicious activity involving the use and distribution of illegal substances such as marijuana near the basketball court area has been introduced.
 - Often obnoxious and offensive activity occurs in this area, the activity and noise in this area interferes with the quiet enjoyment of my property, which in itself is a violation of Westview Lakes Homeowners Association Rules
 - “No obnoxious or offensive activity which may be or become an annoyance or nuisance to any resident shall be conducted upon any part of the Lot. Activities which may interfere with the quiet enjoyment of any resident are prohibited.” As stated on page 4 of 14 of the Westview Lakes Homeowner Rules and Regulations documentation.
- The netting structure that is supposed to prevent the basketballs from entering the back yard of 3 Wild Duck Court, Hampton, VA 23666 and surrounding properties is not adequate, which results increased knocks on the door for basketball retrieval.
- Also, there has been an increase of suspicious activity in the Wild Duck Court locality such as the vandalism that recently occurred at 2 Wild Duck Court, where the occupant’s car was spray painted.

Possible solutions to this problem:

- 1) Obtain an independent third party to perform a site suitability analysis and noise reduction survey of the basketball court/playground area to see if there are possible ramifications and measures that can reduce this private nuisance
 - a. Maybe there is a padding material that could be installed on the court to reduce the noise
 - b. Installation of a noise reduction wall, which would also help with the reduction of loose balls from crossing the fence
 - c. Installing a more efficient ball barrier system to prevent balls from entering the back yard of 3 Wild Duck Court, Hampton, VA 23666 and surrounding properties

- d. Installing a perimeter fence that is opened and closed during approved hours of use
- 2) Possibly moving this structure to the area behind the playground, which would not directly impact any homeowner of this association, or move the structure further away from the back fence so that it does not create an “activity which unreasonably interferes with the use and enjoyment of another’s property.”
- 3) Enforce parental supervision at all times, which at this time is not enforced. This directly fuels the bad behavior that occurs at this location. The lack of parental supervision in this area is really astounding.
- 4) Ensure that this area is being used by homeowners and renters of this association. Patronage of non-Westview members is a definite issue in this park.

As stated in your letter, I did notice that the basketball rim was removed, but that did not correct these actions. The same activity persisted in this location as they pretended that the rim was there and kept playing, and causing commotion even more so.

As a mother, I understand the Homeowners Associations concern about the children playing basketball in side and main street areas. The children playing in the street was not the result of inadequate common area facilities; it is the result of lacking parental supervision, which has now spilled over into the common area behind my property. The lack of child supervision does not mean that it is okay to impose a nuisance and impede the tranquility, morality, and decency of the homeowners/renters on Wild Duck Court, whom have directly been impacted by this activity. This structure has interfered with the Wild Duck homeowner’s interest and enjoyment of use of their own backyards due to the loud basketball noise and rift raft introduced to the community from the installation of this basketball court.

I suffer from debilitating migraine cephalalgia and the noise that occurs at this location often triggers a migraine. If I currently am encountering a migraine this noise often worsens my medical condition by intensifying the effect of the migraine making it last longer. Recovery requires a dark and quiet place to relax and wait for the migraine to subside, but that is impossible at 3 Wild Duck Court, Hampton, VA 23666 due to the noise produced by the basketball court area.

Additionally, there have been many real estate studies that have deemed noise as a viable factor in the devaluation of a home’s value. Noise problems are an automatic problem for all future home buyers and home appraisers. Most homes are usually placed on the market in the summer, which is moving season for a great deal of families (prime time for basketball court use which exemplifies the noise issue). The noise nuisance that has

Charles (Chuck) McEachin and Rachel Wright
12/4/2014
Page 4

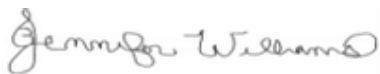
been created by this structure will impede my ability to sell my home by effectively shrinking our potential pool of buyers. My husband and I are fully prepared to seek legal counsel and seek legal ramifications and damages, if we cannot find an adequate solution to this problem so that the enjoyment of use for 3 Wild Duck Court and surrounding properties can be restored.

In all, I would like to work with the board to find an amicable solution, but I feel that we are taking the brunt of the negative impacts imposed on us by Westview Lakes Homeowners Association's board of directors and Management Association. If you would like to further discuss this issue, I can be reached at 540-645-3551 or 571-305-9610. I would be happy to speak with you in regards to this issue.

In closing, I am requesting that there be a formal hearing set to discuss the impact of the basketball court on the 3 Wild Duck Court, Hampton, VA 23666 and other Wild Duck interested parties.

It is my understanding that the Registrant of Service for Westview Lakes Homeowners association is Leilani Adams with Thomas, Adams and Associates. If you could provide me with her address of service and contact information, it would be immensely appreciated. If she is not the Registrant of Service, please provide the correct Registrant of Service's contact information and service address.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Williams".

Jennifer Williams

From: [Veanna r. sutton](#)
To: [Smith, Matthew](#)
Subject: Westview Lakes
Date: Monday, February 23, 2015 8:44:57 PM

Greetings Mr. Smith,

Thanks for the opportunity to voice my opinion regarding the basketball court.

The noise is bothersome when it is late at night and there are people down there yelling and screaming and then walking down the street bouncing the balls and yelling on their way home later but the biggest problem that we see is the trash. We have watched them just throw trash on the ground and it blows into the street and into people's yards. There doesn't seem to be a lot of respect for property of others.

Initially we were told that there would be some form of supervision provided but the association has failed to do so.
(My address is 2 Wild Duck Ct)

Mrs. Pitts

From: pascnt@verizon.net
To: [Smith, Matthew](#)
Subject: Use Permit Application No:15-00005
Date: Wednesday, May 27, 2015 11:06:37 AM

I have been a resident in Westview Lakes since 1997. The play ground to include swings and slides have also been in use since about the same time. The basket ball area was put in last year. The basket ball area is the part I do not agree should be. The players are very loud and the language is very loud and abusive. They also park their cars and hang out in the cars and smoke. The basket ball area is to close to the private residents.

Please vote to remove the basket ball area.

Thanks for your consideration:

Priscilla Saunders
138 Westview Drive

From: [jennifer williams](#)
To: [Southall, Tommy](#); [Carlton Campbell](#); [Schmidt, Teresa](#); [Gregory Williams](#); [Bunting, Mary](#); [McCloud, Andre](#); [gaylarue@gmail.com](#); [Gaynette LaRue](#); [Brown, Bonnie](#); [O'Neill, Terry](#); [Ibikunle, Toluwalase](#); [Wallace, George](#); [Curtis, Linda](#); [Hobbs, Billy](#); [Moffett, Will](#); [Snead, Chris](#); [Tuck, Donnie](#); [Smith, Matthew](#); [Rachael Wright](#); [chuckwestview@yahoo.com](#)
Subject: WestView Lakes Use Permit Application No. 15-00005:
Date: Monday, June 08, 2015 12:54:28 PM
Attachments: [Complaint.pdf](#)
[newshoa003.pdf](#)

Dear Planning Commission and City Council,

I was not unable to attend the recent planning commission and HOA meetings due to work requirements and healthcare appointments. I am the person who complained about the impact that this infrastructure has had on my property, which has been very negative. Due to my complaint, the City Planning Office identified that West View Lakes HOA did not have the proper use permit for the park area.

I am the owner of 3 Wild Duck Court Hampton, VA 23666, and my home has been taken hostage by the activity that occurs at the basketball court that West View Lakes Home Owners Association has installed behind my property. The enjoyment of my home, especially during the summer is impossible, and makes the home unlivable by the introduction of this recreational noisy use.

I suffer from migraines, and relief in my home because the noise from this structure emits throughout the home. I am a service rated disabled veteran due to the severity of my migraines, and I should be able to have relief in my own home. The language utilized at this location is very obscene, and impacts the peace of simply sitting in my back yard.

I would love to regain the use and enjoyment of my home, but with the basketball court installed there, it will be virtually impossible, especially with the lack of supervision and noise from the basketballs. I have made several complaints to the West View Lakes Board of Directors and Management Company with out avail. I offered suggestions as well.

I am writing this letter so that the planning commission and city council can understand how this infrastructure has negatively impacted the properties in the Wild Duck vicinity.

Prior to the current Use Permit Application:

I am sure some of these things have been completed, in the **after the fact use permit application**, that is now under review.

I asked the current board why they chose this area right behind my fence, and I was told that it would

have been too expensive to cut down a few of the trees to place the structure further away from the homes. The insurance would have cost too much to place it elsewhere so I am just the unlucky person that has to deal with this situation.

I have a definite concern of this use negatively impacting my property value when it comes time to sell my home due to the activity it is drawing to our neighborhood, and the fact it is a permanent structure less than 5 feet away from my back property line. Renters/home buyers are not going to choose to deal with this activity, which will limit my buyer/renter pool in the future. I myself would not have purchased my home if this were installed behind the fence for fear of dealing with a nuisance.

I was never notified of the installation of this structure's location until they broke ground and began pouring the concrete. This board has the option to call a special meeting of the homeowners in the vicinity and failed to do so. They feel that they can do what they want, which shows by their lack of interest in acquiring the proper permit beforehand vice after the fact. Although, this is discussed on the board's minutes, I never received notification of such special meeting. I am very doubtful that it occurred. Additionally, when I requested copies of all the minutes in regards to the basketball court, the special meeting minutes were not included.

There were no documented survey results of the walk around homeowner's survey. I know that they spoke with 2, 6, 8 Wild Duck, and since we were not home, they felt that we were not important enough to consult, although our home would be the most impacted.

The owner of 1 Wild Duck is AD Navy and is in and out, and I have been unable to reach him, the owners of 5 Wild Duck Court were made aware of the situation when I contacted them(they are standing behind me in this matter), I have not been able to speak with the listed owner of 7 Wild Duck, 2 Wild Duck Court was okay with the installation of the court (they were told that Hampton Police Department would be doing increased patrols and monitoring the area and that the area would be supervised), but now they are concerned due to the negative activity it has caused their renters, and 4-8 Wild Duck Court were against the installation of the court from the get go. We as the owners of 3 Wild Duck Court would have never agreed to the installation of this basketball court pad and goal behind our home, if we were adequately notified of these plans. After speaking with our previous HOA president, Mr. Richard Hill, it is my understanding that our members were under the impression that the board had the permission of the homeowners in the Wild Duck Court vicinity to install the basketball court.

They never provided the homeowners a site plan, of where this structure was going to be installed (before it was installed) so I would question their site survey plan process. I have requested a copy of this on numerous occasions without successfully obtaining this information.

The installation and use of this basketball court has:

Introduced and encouraged nefarious activity behind my home such as increased foot traffic, drug activity, noise from basketballs, and unruly/unsupervised children using vulgar language.

The noise level produced by this use can be heard in any room of my home. The homes of 4-8 Wild

Duck can hear the noise from their homes while trying to enjoy their front porches. If they are able to hear the noise from their front porches, please imagine what noise you can hear inside of 1-7 Wild Duck Court

Basketballs frequently have come over the fence, and we have had children coming over the fence to retrieve their items. We have incurred damage to our fence from this use/installation of this infrastructure. This damage has come from the children climbing over the fence into private property.

Westview Lakes HOA has not adequately controlled the area to prevent this from becoming a nuisance.

The home owners association has shown a lack of responsibility for the activity that occurs on this site, and passed the buck off on the City of Hampton Police Department. I have asked that they secure this area when it is not permitted to be used, ensure that it is used by residents only, and require adult supervision during use. I also have requested that they look into mitigation factors for noise reduction for this infrastructure.

Mr. McEachin stated that a perimeter fence would not be adequate because he does not want to put children in cages. I guess when parents take their children to a swimming pool; they are placing their child in a cage. It is a safety mechanism and necessary to ensure the safety and security of the homeowners of Wild Duck and Mallard Court

Impacts before the West View Lakes Home Owners Association received the Cease and Desist Letter from the City of Hampton.

The president of our HOA is Charles McEachin, whose address is 4 Christian Way, located in the vicinity of the original basketball court. West View Lakes HOA Boards of Directors removed this basketball court due to the same type of activity that is occurring behind my home. He stated that the basketball court installation would prevent children from playing ball in the street. That is untrue; children are still placing portable goals at the edge of their driveways and playing ball in the streets. This is allowed since the goal itself is not in the street. The basketball court behind my home is being utilized a great deal by non-residents, which impacts the safety and security of my home and others.

1 Wild Duck Court has been burglarized since the installation of this basketball court

The renters of 2 Wild Duck Court's car has been spray painted since this basketball court has been installed.

My 2012 Volkswagen Jetta was impacted by a hit and run.

There has been suspicious people seen around my home and 1 Wild Duck Court when no one is there.

The noise emitted during the use of this infrastructure is unbearable.

In the letter from the HOA, they indicate that people are not allowed in the park after sunset. In the summer sunset is between 8-9 pm, which is key family time for most.

This area has often been left trashed and in disarray. The removal of the basketball rim did not correct the issue, as this area was left trashed after the rim was removed. Use of this area continued at the same rate and pace as if the rim were still there.

The home owners association has shown a lack of responsibility for the activity that occurs on this site, and passed the buck off on the City of Hampton Police Department. This was made clear in the letter address to me on 08/14/2014, which I did not receive until 12/03/2014) In my opinion, the City of Hampton Police Department should not be responsible for ensuring that

HOA park rules are followed. It is the responsibility of the HOA whom installed the infrastructure there.

Recent HOA News Letter:

Additionally, in the latest news letter received from this HOA, the President indicated a variety of steps to get the word out about the basketball court. They never provide anyone with site plans of the exact location of this area, and many people did not know its location until after it was installed.

They list an array of advantages for having the area, which are misleading since there has been an increase of nuisance activity at the basketball court, a break in at 1 Wild Duck Court, suspicious persons loitering around 1 & 3 Wild Duck Court, children are left unsupervised, children are still playing basketball in the streets by placing portable goals at the end of their driveways and bouncing balls in the street, and the area is not properly maintained and left unsanitary.

They passed the blame of not having the Use Permit Application completed onto the developer. If the developer intended on this area being a park, it would have been included in the original site plan. The WestView Lakes HOA board was responsible for ensuring that the proper processes and procedures were done before undertaking this project, not the developer.

Requests and Relief:

I would like to ask this planning commission and City Council to limit the use of this playground by disallowing use of basketball where the current court is installed, and possibly institute a green area rule

to further prevent a conflict of mixed uses for the homeowners of Mallard and Wild Duck Court.

Additionally, I would like to ask this commission/council to add a condition that would require the HOA to submit an amended or new application for adding additional recreational uses to this property.

Conclusion:

The use and enjoyment of this home and others should not be reliant upon the nefarious and noise activity of this basketball court, but that is exactly what is happening for 3 Wild Duck Court and surrounding properties.

This infrastructure brings unreasonable intrusion to the occupants within the Wild Duck Court vicinity, and hopefully, something can be done to mitigate impacts of this recreation use upon the residents of Wild Duck Court and the West View town homes across the street.

It is very disheartening that West View Lakes did not follow the Use Permit Application process before they installed this infrastructure behind my home. I truly believe that some of these issues could have been resolved before now if they instituted proper planning, and followed the Use Permit procedural process from the very beginning.

I pray that this commission and council can provide some relief in this issue.

Thank You for your time and consideration in this matter.

If you should have any questions for me, please feel free to contact me via 540-645-3551 or a jw8419@gmail.com

Very Respectfully,

Jennifer Lynn Williams

1

Ben

Petition for the abatement of the concrete slab installed in the common area of Westview Lakes homeowners association

Petition summary and background	The Westview Lakes Board of Directors and some of its member decided that they would install a basketball court structure in the common area directly behind the fence of 3 Wild Duck Court Hampton VA 23666. This structure is located immediately behind the back property line of 3 Wild Duck Court Hampton VA 23666 and has introduced a nuisance to the neighbors in the local vicinity, and the board of directors & management company are failing to maintain the area as prescribed in the Westview Lakes bylaws and declaration covenant.
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to remove this structure

Printed Name	Signature	Address	Comment / EMAIL	Date
1 Jennifer Williams	Jennifer Williams	3 Wild Duck Court	JW8419@gmail.com	1/29/15
2 Connie Johnson	Connie Johnson	144 Westview Dr	813-1210	2-8-15
3 Krystle Jones	Krystle M. Jones	140 Westview Drive	MOVE IT ELSEWHERE/706	2-8-15
4 PRISCILLA SAUNDERS	Priscilla Saunders	138 Westview Dr.	BOSENT@VERIZON.NET	2-8-15
5 JASON BALLARD	Jason Ballard	134 Westview Dr.	MOVE IT. 315 0916	2-8-15
6 DERRICK BREWSTER	Derrick Brewster	1 Mallard Ct.	MOVE COAST ELSEWHERE	8 FEB 15
7 KITT PARKER	Kitt Parker	112 Westview Dr.	MOVE OUTSIDE	2/8/15
8 BOONAN CHANDLER	Boonan Chandler	1704 CT. HAMPTON VA 23666	MOVE 300 N. HAMPTON ST. NOT A SLAB	2/8/15
9 Carla Carney	Carla Carney	5 Roca Ct	move / remove	2/8/15
10 Carl Amos Carney	Carl Amos Carney	146 Westview	move / remove	2/8/15
11 Keith Topping	Keith Topping	6 Park Court	Remove	2/8/15
12 Veronica Billings	Veronica Billings	3 Long Ct	airel@cox.net	2/8/15
13 CONRADO J. LORD	CJ Lord	8 LONG CT APT VA 23666	clord10@cox.net	2/8/15
14 Ted VanHouten	Ted VanHouten	3 Dawn Lane &	tvanhouten@cox.net	2/8/15
15 Christy Oze	Christy Oze	4 Long Court	ChristyOze@gmail.com	2/8/15
16 MARK ASHBURN	Mark Ashburn	160 WESTVIEW DR.	MARKASHBURN@HOTMAIL.COM	2/8/15
17 LANA ASHBURN	Lana Ashburn	160 WESTVIEW DR.		
18 Archie Graham	Archie Graham	3 Concord Ln	Relocate to larger common area	
19 Joyce Wapples	Joyce Wapples	176 Westview Dr.	Just moved here	2/8/15

2

may or june general district ^{2/8 Stb} court

Petition for the abatement of the concrete slab installed in the common area of Westview Lakes homeowners association

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Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to remove this structure

	Printed Name	Signature	Address	Comment	Date
20	Eric & Evelyn Lockby	Eric Lockby	15 Kincaid Ln Hampton	757 865 8894	2/8/2015
21	Tanisha Williams	Tanisha Williams	19 Kincaid Ln Hampton	851 770 4897	2/8
22	Richard Hill	Richard Hill	24 Kincaid Ln Hampton		2/8
23	Shenika Alexander	Shenika Alexander	57 Kincaid Ln Hampton	757-148-7311	2/8
24	Yanice Gates	Yanice Gates	30 Kincaid Ln	757-865-1606	2/8
25	Nicole Cowling	Nicole Cowling	32 Kincaid Lane, Hampton	757-224-8627	2/8
26	William Wale	William Wale	73 Kincaid Ln	757 766 8180	2/8
27	Krystopher K. Douglas	Krystopher K. Douglas	4 WILD DUCK CT	757-224-1102	2/9
28	Arthur Bolden	Arthur A Bolden	4 Drake Ct	757-608-8214	2/9
29	Stephanie Sadler	Stephanie J. Sadler	8 WILD DUCK CT	757 593 0912	2/9
30	Reginald Love	Reginald Love	12 Kincaid Lane	757 865-7557	2/9
31	Linda Carter	Linda Carter	3 Bullock Place	757-865-6334	2/9
32	Lance Harris	Lance Harris	1 Bullock Place	757-342-7174	2/9
33	Sareth-calk	Sareth-calk	69 Kincaid	757 637 7703	2/9
34	Felicia Reese	Felicia Reese	77 Kincaid Lane	757 778-7392	2/9
35	Eugene & Yvonne Brown	Eugene Brown	83 Kincaid Ln	757-865-8039	2/9
36	Hattie L. Session	Hattie L. Session	100 Kincaid Ln	757 865 6193	2/9
	Jason Sadler	Jason Sadler	8 Wild Duck		2/9



MEMORANDUM

TO: City Council

FROM: Terry O'Neill

DATE: June 5, 2015

SUBJECT: Westview Lakes HOA Use Permit Application

The Westview Lakes Homeowners Association has applied for a use permit to operate an active park/playground in the Westview Lakes subdivision. The Planning Commission heard this item at its June 4th meeting.

Westview Lakes is a subdivision of roughly 300 homes located off of Saunders Road in northwest Hampton. In 2000, the Westview Lakes Homeowners' Association erected playground equipment on HOA-owned common area. Hampton's Zoning Ordinance permits parks/playgrounds with approval of a use permit. Since the installation of the playground equipment, the common area has been used as a park/playground without a use permit.

In May 2014, a concrete pad and basketball hoop were installed at the park/playground. Complaints about activities related to the use of the basketball court brought the existence of the park/playground to the attention of city staff. A Notice of Zoning Violation was issued to the HOA stating that use of common area as a park/playground must cease pending consideration of a use permit by City Council.

During the use permit application process, staff received letters from three Westview Lakes residents opposing continued use of the basketball court. A petition with 37 signatures stating opposition to the basketball court was also received.

In May 2015, staff attended a town hall meeting held by the HOA on the topic of the use permit application and basketball court. Residents discussed complaints of drug use, profanity, noise, trash, and loitering associated with the basketball court. Some residents said this activity diminished the enjoyment of their property and made it uncomfortable for parents and children to use the playground equipment. Residents also discussed what they perceived to be an ongoing problem of unacceptable youth behavior and inadequate recreational opportunities for youth. It was generally agreed that the behavior around the basketball court was not new to the neighborhood, but was an ongoing problem.

Other residents stated that they thought the basketball court provided a positive outlet for neighborhood youth and that it should remain. This is the view of the HOA board members.

Community Development Department

22 Lincoln Street, 5th floor | Hampton, Virginia 23669
www.hampton.gov | Hampton's 311: 757.727.8311 | P.757.727.6140

In addition, the HOA sent out a survey regarding use of the playground and basketball court to 310 households. 53 responses were received. About two thirds of respondents favored the court remaining, and one third felt its use should not be allowed to continue.

At the Planning Commission meeting, staff recommended a condition be attached to the use permit setting back active recreational uses, such as basketball, 50' from residential properties. The current location of the court is 5' to 10' from residences adjacent to the playground. This condition would not allow the court to remain in its current location.

Discussion at the Planning Commission meeting, primarily between Commissioners and HOA representatives, revolved around several items:

- Whether residents were adequately notified that the HOA was installing the basketball court.
- The need for the basketball court as a recreational outlet for neighborhood youth.
- The perception that overall neighborhood conditions have improved since the installation of the court.
- The benefit of the court being in a highly visible location, and the expense of moving the basketball court away from adjacent residences.
- Negative impacts of the basketball court on the residences closest to the basketball court.
- Measures the HOA could take to lessen the impact of the court on nearby residences if its use were allowed to continue.
- The need for the community to better police itself, with suggested assistance from the Division of Housing and Neighborhood Services.

On a 5 -1 vote, the Planning Commission recommended approval of the use permit with a condition requiring active recreational uses be set back 50' feet from residential properties, but exempting the basketball court from this condition. Its use would be allowed in its current location.

Community Development Department

22 Lincoln Street, 5th floor | Hampton, Virginia 23669
www.hampton.gov | Hampton's 311: 757.727.8311 | P.757.727.6140



City of Hampton, VA

Agenda Review

File Number: 15-0215

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0215**

Request Number: **R-2015-00208**

File Type: **Ordinance - Non-Coded**

Department: **City Attorney**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective: **7/8/2015**

Status: **Received By Clerk's Office**

Created By: **Christina Campana**

Phone:

Requestor: **Veronica E. Meade**

Phone: **757-727-6120**

Presenter: **Delane Carty, Civil Engineer
Technician, Dept. of Public Works**

Phone: **757-726-6965**

Title: **Ordinance Approving the Vacation of a Portion of Boxwood Point Road Comprising 3,797 Square Feet (0.087 Acre), More or Less, to Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust, Dated January 16, 1991**

Action Requested: **Approve Ordinance**

Estimated Time: **Five Minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments: Ordinance Exhibit "A"
Ordinance Exhibit "B"
Vacation Agreement

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The City owns certain real property comprising 3,797 square feet (0.087 acre) known as a portion of Boxwood Point Road as depicted on Exhibit "A" ("Vacation Area"). Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991 owns property adjacent to the Vacation Area, which is identified as 108 Stonehurst Road (LRSN 12000593) (the "Trust Property"). The Orchards at Hampton River subdivision, also adjacent to the Vacation Area (the "Orchards"), is being developed at the end of Boxwood Point Road.

During site plan review of the Orchards, staff became aware that the entire area highlighted on Exhibit "A" had been used for years as a public right of way. However, the owner of the property at 105 Southerland Drive (LRSN 12000609) demonstrated that the City obtained a sanitary sewer easement only over the highlighted section of Exhibit "A" adjacent to his property. Hence, restricting access across only the Vacation Area resulted in a dead-end right of way with insufficient area for a turnaround. Furthermore, construction of the right of way to accommodate the Orchards would adversely impact the Trust

Property, that is, the proposed curb at the intersection of Boxwood Point Road and Stonehurst Road is approximately 2 feet lower than the Trust property.

Staff suggested closure of the Vacation Area because Boxwood Point Road does not meet Hampton's Design and Construction Standards. For instance, the pavement does not meet the required width for two-way traffic or emergency vehicle access, there is inadequate drainage, and no curb, gutter, or sidewalk. For these reasons, staff recommends that the Vacation Area be transferred without charge. The Vacation Area shall not be developable unless it is merged with the Trust Property. A 20' easement shall be retained over the entire Vacation Area for sanitary sewer and utilities.

Twelve letters were sent to residents in the neighborhood to gauge their interest in closing a portion of Boxwood Point Road. Staff received only two responses, one in favor of the closure; and the other, opposed. Three letters were sent to the abutting property owners, two of which have no interest in the Vacation Area. Only the owner of the Trust Property expressed an interest in acquiring the Vacation Area.

Local public utility companies and City staff have reviewed this request. While no objections were raised, a non-exclusive utility easement is requested. Given that the Vacation Area will not be needed for any public purpose, staff recommends approval with the retention of a 20 sanitary sewer and utility easement over the entire area.

LEGISLATION TEXT:

WHEREAS, the City owns certain real property comprising 3,797 square feet (0.087 acre) known as a portion of Boxwood Point Road as depicted on Exhibit "A" ("Vacation Area");

WHEREAS, Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, owns property adjacent to the Vacation Area, which is identified as 108 Stonehurst Road (LRSN 12000593) (the "Trust Property");

WHEREAS, the Orchards at Hampton River subdivision, also adjacent to the Vacation Area (the "Orchards"), is being developed at the end of Boxwood Point Road;

WHEREAS, during site plan review of the Orchards, staff became aware that the entire area highlighted on Exhibit "A" had been used for years as a public right of way;

WHEREAS, the owner of the property at 105 Southerland Drive (LRSN 12000609) demonstrated that the City obtained a sanitary sewer easement only over the highlighted section of Exhibit "A" adjacent to his property;

WHEREAS, restricting access across only the Vacation Area resulted in a dead-end right of way with insufficient area for a turnaround; and construction of the right of way to accommodate the Orchards would adversely impact the Trust Property, that is, the proposed curb at the intersection of Boxwood Point Road and Stonehurst Road is approximately 2 feet lower than the Trust property;

WHEREAS, staff suggested closure of the Vacation Area because Boxwood Point Road does not meet Hampton's Design and Construction Standards, for example, the pavement does not meet the required width for two-way traffic or emergency vehicle access, there is inadequate drainage, and no curb, gutter, or sidewalk;

WHEREAS, since the deficiencies severely limit the usefulness of the Vacation Area of public purposes, staff recommends that the Vacation Area be transferred without charge;

WHEREAS, staff also recommends that the Vacation Area not be developable unless it is merged

with the Trust Property;

WHEREAS, staff and local public utility companies recommend that a 20' non-exclusive easement be retained over the entire Vacation Area for sanitary sewer and utilities;

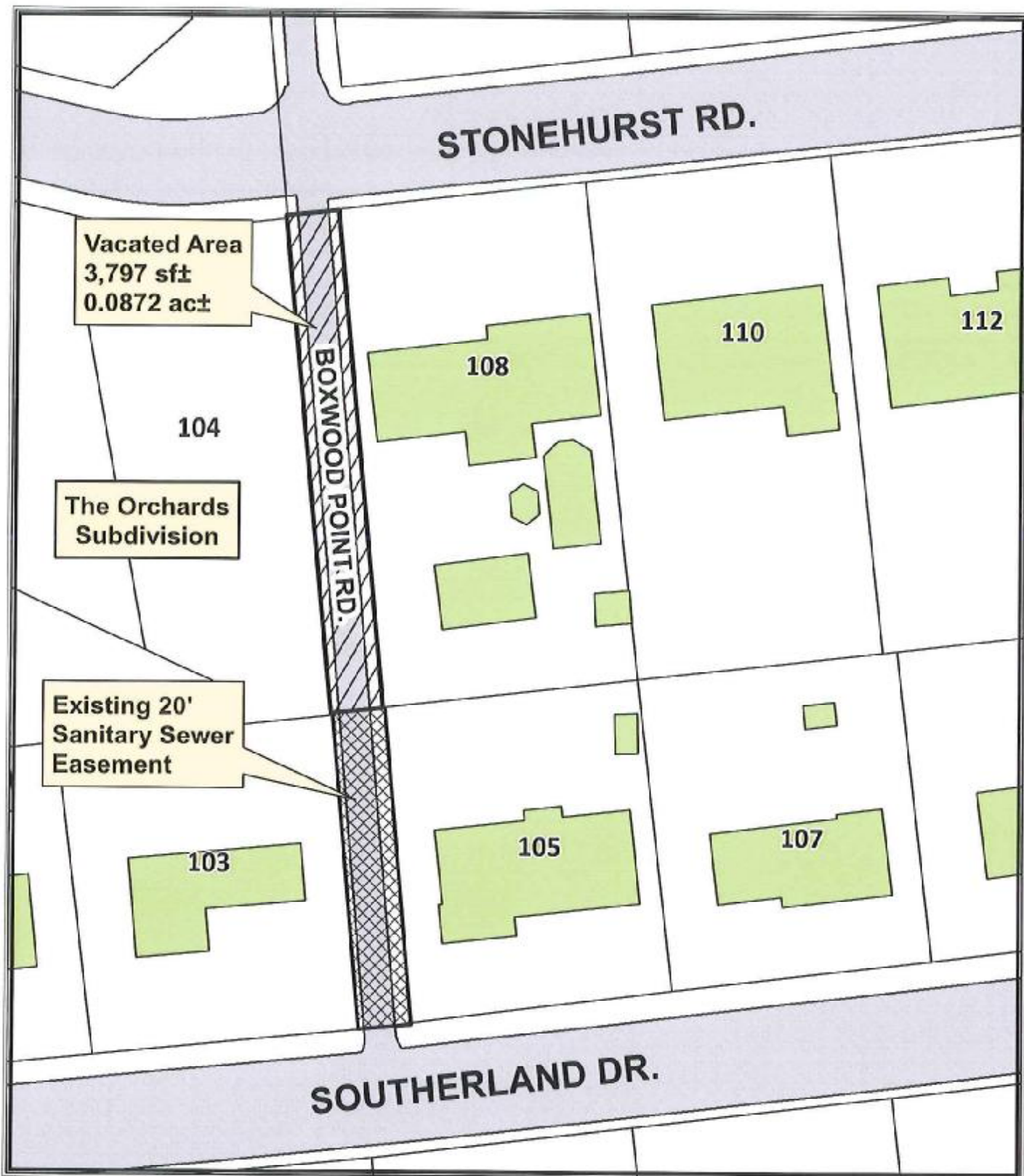
WHEREAS, letters were sent to twelve residents in the neighborhood to gauge their interest in closing a portion of Boxwood Point Road; and staff received only two responses, one in favor of the closure, and the other, opposed;

WHEREAS, letters were sent to the three abutting property owners, two of which have no interest in the Vacation Area; and only the owner of the Trust Property expressed an interest in acquiring the Vacation Area; and

WHEREAS, pursuant to Chapter 34, Article V of the Code for the City of Hampton, City Council agrees to vacate a portion of Boxwood Point Road to Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, comprising 3,797 square feet (0.087 acre), more or less, with the conditions that it not be developable unless merged with the Trust Property and that a 20' easement be retained over the entire Vacation Area for sanitary sewer and utilities.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Hampton, Virginia, as follows:

1. That the vacation of a portion of Boxwood Point Road comprising 3,797 square feet (0.087 acre), more or less, to Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust, dated January 16, 1991, is hereby approved;
2. That the City Manager, or her authorized designee, and Clerk of Council are hereby authorized to execute and attest the vacation of a portion of Boxwood Point Road as set forth in this Ordinance and the Vacation Agreement attached as Exhibit "B"; and
3. That a certified copy of this vacation ordinance shall be recorded in the Office of the Clerk of the Circuit Court for the City of Hampton, Virginia in the manner as deeds are recorded and indexed in the name of the City of Hampton.



**Exhibit "A" Showing Vacation of a Portion
of Boxwood Point Rd**

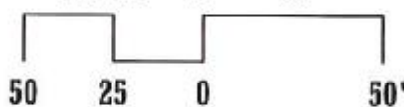
From: City of Hampton, VA

To: Annie K. Starnes Revocable Trust

Prepared by: CITY of HAMPTON

Dept. of Public Works - Engineering Services

Scale: 1" = 50'



Map printed: 18 June, 2015



HAMPTON VA



Reviewed by:

Annie K. Starnes, Trustee
Annie K. Starnes Revocable Trust
108 Stonehurst Road
Hampton, VA 23663

Portion of Boxwood Point Road

After Recording, Return to:

Veronica E. Meade
City Attorney's Office
City of Hampton
22 Lincoln Street
Hampton, VA 23669

EXEMPTION FROM CLERK'S FEE UNDER
VIRGINIA CODE SECTION 17.1-266

VACATION AGREEMENT
(Portion of Right of Way Known as Boxwood Point Road)

THIS VACATION AGREEMENT made this 8th day of July, 2015, by and between the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City"), and ANNIE K. STARNES, TRUSTEE, OF THE ANNIE K. STARNES REVOCABLE TRUST DATED JANUARY 16, 1991, owner of property located at 108 Stonehurst Road, Hampton, Virginia 23669 (the "Trust Property").

WHEREAS, the City is the fee simple owner of certain real property comprising 3,797 square feet (0.087 acre) located in the City of Hampton, known as a portion of Boxwood Point Road and more particularly described as:

All that certain lot, piece, or parcel of land containing 3,797 square feet (0.087 acre), more or less, situate, lying, and being in the City of Hampton, Virginia, and being designated as "BOXWOOD POINT RD." as shown on that certain exhibit entitled: "EXHIBIT SHOWING VACATION OF A PORTION OF BOXWOOD POINT RD FROM: CITY OF HAMPTON, VA TO: ANNIE K. STARNES REVOCABLE TRUST," said exhibit bearing a date of March 23, 2015 and prepared by the City of Hampton, Department of Public Works, Engineering Services, which is attached hereto as Exhibit "A" for reference and made a part of this legal description (the "Vacation Area");

WHEREAS, Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, owns property adjacent to the Vacation Area, which is identified as 108 Stonehurst Road (LRSN 12000593) (the "Trust Property");

WHEREAS, the Orchards at Hampton River subdivision, also adjacent to the Vacation Area (the “Orchards”), is being developed at the end of Boxwood Point Road;

WHEREAS, during site plan review of the Orchards, staff became aware that the entire area highlighted on Exhibit “A” had been used for years as a public right of way;

WHEREAS, the owner of the property at 105 Southerland Drive (LRSN 12000609) demonstrated that the City obtained a sanitary sewer easement only over the highlighted section of Exhibit “A” adjacent to his property;

WHEREAS, restricting access across only the Vacation Area resulted in a dead-end right of way with insufficient area for a turnaround; and construction of the right of way to accommodate the Orchards would adversely impact the Trust Property, that is, the proposed curb at the intersection of Boxwood Point Road and Stonehurst Road is approximately 2 feet lower than the Trust property;

WHEREAS, staff suggested closure of the Vacation Area because Boxwood Point Road does not meet Hampton’s Design and Construction Standards, for example, the pavement does not meet the required width for two-way traffic or emergency vehicle access, there is inadequate drainage, and no curb, gutter, or sidewalk;

WHEREAS, since the deficiencies severely limit the usefulness of the Vacation Area of public purposes, staff recommends that the Vacation Area be transferred without charge;

WHEREAS, staff also recommends that the Vacation Area not be developable unless it is merged with the Trust Property and that non-exclusive a 20’ easement be retained over the entire Vacation Area for sanitary sewer and utilities; and

WHEREAS, pursuant to Chapter 34, Article V of the Code for the City of Hampton, City Council agrees to vacate a portion of Boxwood Point Road to Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, comprising 3,797 square feet (0.087 acre), more or less, with the conditions that it not be developable unless merged with the Trust Property and that a 20’ easement be retained over the entire Vacation Area for sanitary sewer and utilities.

NOW, THEREFORE, in accordance with Chapter 34, Article V of the Hampton City Code, the City of Hampton, Virginia, acting by and through its City Council at its duly held meeting on the 8th day of July, 2015, does by these presents release, quit-claim, and vacate unto Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, the following described property, to-wit:

All that certain lot, piece, or parcel of land containing 3,797 square feet (0.087 acre), more or less, situate, lying, and being in the City of Hampton, Virginia, and being designated as "BOXWOOD POINT RD," as shown on that certain exhibit entitled: "EXHIBIT SHOWING VACATION OF A PORTION OF BOXWOOD POINT RD FROM: CITY OF HAMPTON, VA TO: ANNIE K. STARNES REVOCABLE TRUST," said exhibit bearing a date of March 23, 2015 and prepared by the City of Hampton, Department of Public Works, Engineering Services, which is attached hereto as Exhibit "A" for reference and made a part of this legal description.

IN WITNESS WHEREOF, the City of Hampton, Virginia, a municipal corporation, has caused its name to be signed hereto by its City Manager or her duly Authorized Designee, and its corporate seal to be affixed and attested by its Clerk, Katherine K. Glass, they having been duly authorized to do so; and Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust likewise has caused her name to be signed hereto.


THE CITY OF HAMPTON, VIRGINIA

By: _____
City Manager / Authorized Designee

ATTEST:

Clerk

Approved as to form and legal sufficiency:



Deputy City Attorney

ACCEPTANCE:

ANNIE K. STARNES REVOCABLE
TRUST, DATED JANUARY 16, 1991

By: Annie K. Starnes
Annie K. Starnes, Trustee

COMMONWEALTH OF VIRGINIA
City of Hampton, to-wit:

I hereby certify on this 9th day of June, 2015 that the foregoing
Vacation Agreement was acknowledged before me by Annie K. Starnes, Trustee, Annie
K. Starnes Revocable Trust, Dated January 16, 1991. She is known to me personally or
provided Va DL as identification.

Nakisha Jones
Notary Public

My commission expires: 9/30/2018
Registration No. 7622916



EXHIBIT "A"

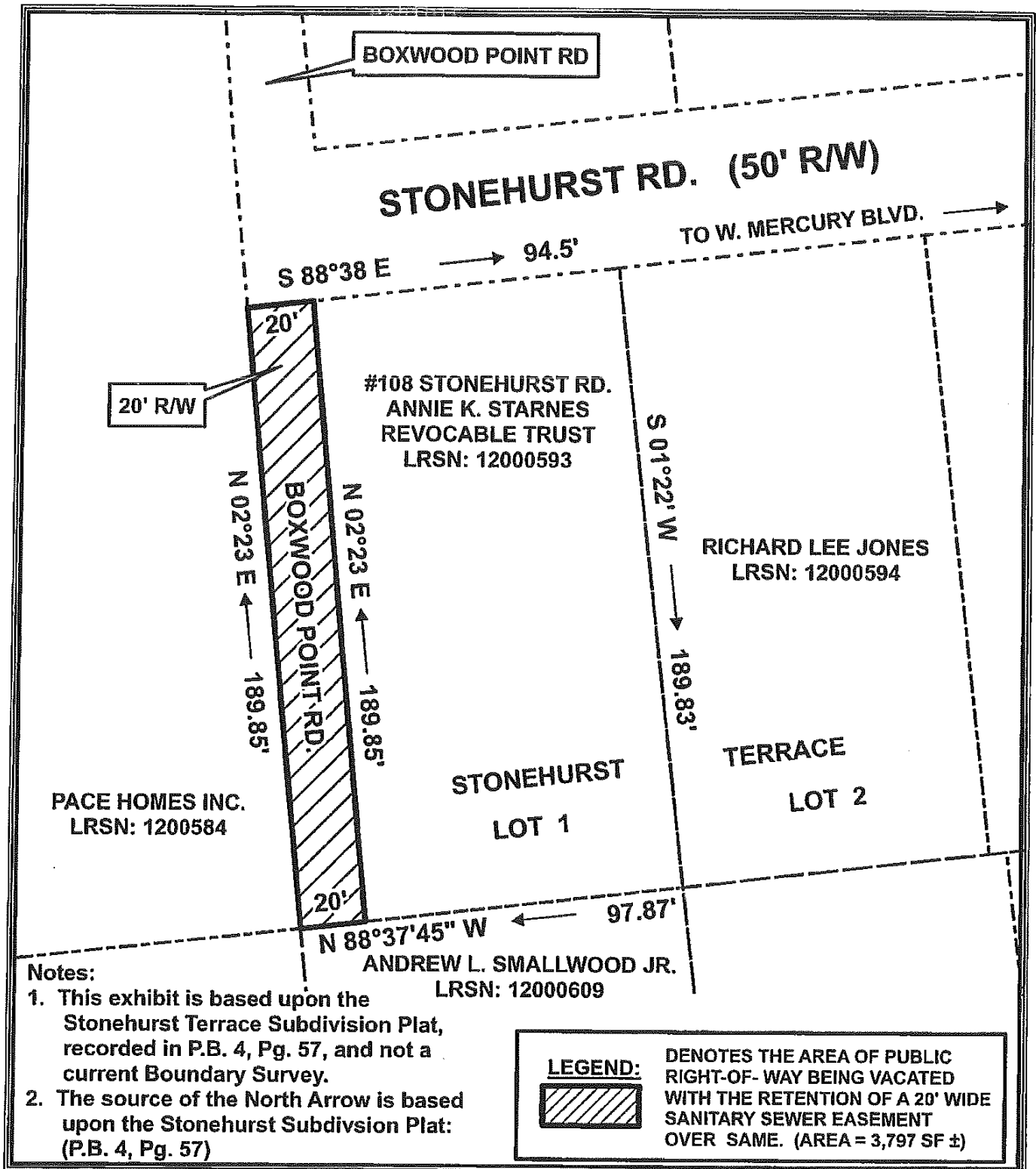


Exhibit Showing Vacation of a Portion of Boxwood Point Rd

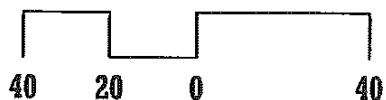
From: City of Hampton, VA

To: Annie K. Starnes Revocable Trust

Prepared by: CITY of HAMPTON

Dept. of Public Works - Engineering Services

Scale: 1" = 40'



Map printed: 23 March, 2015



HAMPTON VA

Reviewed by:

Portion of Boxwood Point Road

Annie K. Starnes, Trustee
Annie K. Starnes Revocable Trust
108 Stonehurst Road
Hampton, VA 23663

After Recording, Return to:

Veronica E. Meade
City Attorney's Office
City of Hampton
22 Lincoln Street
Hampton, VA 23669

EXEMPTION FROM CLERK'S FEE UNDER
VIRGINIA CODE SECTION 17.1-266

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(Portion of Right of Way Known as Boxwood Point Road)

THIS VACATION AGREEMENT made this 8th day of July, 2015, by and between the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia located at 22 Lincoln Street, Hampton, Virginia 23669 (the "City"), and ANNIE K. STARNES, TRUSTEE, OF THE ANNIE K. STARNES REVOCABLE TRUST DATED JANUARY 16, 1991, owner of property located at 108 Stonehurst Road, Hampton, Virginia 23669 (the "Trust Property").

WHEREAS, the City is the fee simple owner of certain real property comprising 3,797 square feet (0.087 acre) located in the City of Hampton, known as a portion of Boxwood Point Road and more particularly described as:

All that certain lot, piece, or parcel of land containing 3,797 square feet (0.087 acre), more or less, situate, lying, and being in the City of Hampton, Virginia, and being designated as "BOXWOOD POINT RD." as shown on that certain exhibit entitled: "EXHIBIT SHOWING VACATION OF A PORTION OF BOXWOOD POINT RD FROM: CITY OF HAMPTON, VA TO: ANNIE K. STARNES REVOCABLE TRUST," said exhibit bearing a date of March 23, 2015 and prepared by the City of Hampton, Department of Public Works, Engineering Services, which is attached hereto as Exhibit "A" for reference and made a part of this legal description (the "Vacation Area");

WHEREAS, Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, owns property adjacent to the Vacation Area, which is identified as 108 Stonehurst Road (LRSN 12000593) (the "Trust Property");

WHEREAS, the Orchards at Hampton River subdivision, also adjacent to the Vacation Area (the “Orchards”), is being developed at the end of Boxwood Point Road;

WHEREAS, during site plan review of the Orchards, staff became aware that the entire area highlighted on Exhibit “A” had been used for years as a public right of way;

WHEREAS, the owner of the property at 105 Southerland Drive (LRSN 12000609) demonstrated that the City obtained a sanitary sewer easement only over the highlighted section of Exhibit “A” adjacent to his property;

WHEREAS, restricting access across only the Vacation Area resulted in a dead-end right of way with insufficient area for a turnaround; and construction of the right of way to accommodate the Orchards would adversely impact the Trust Property, that is, the proposed curb at the intersection of Boxwood Point Road and Stonehurst Road is approximately 2 feet lower than the Trust property;

WHEREAS, staff suggested closure of the Vacation Area because Boxwood Point Road does not meet Hampton’s Design and Construction Standards, for example, the pavement does not meet the required width for two-way traffic or emergency vehicle access, there is inadequate drainage, and no curb, gutter, or sidewalk;

WHEREAS, since the deficiencies severely limit the usefulness of the Vacation Area of public purposes, staff recommends that the Vacation Area be transferred without charge;

WHEREAS, staff also recommends that the Vacation Area not be developable unless it is merged with the Trust Property and that non-exclusive a 20’ easement be retained over the entire Vacation Area for sanitary sewer and utilities; and

WHEREAS, pursuant to Chapter 34, Article V of the Code for the City of Hampton, City Council agrees to vacate a portion of Boxwood Point Road to Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, comprising 3,797 square feet (0.087 acre), more or less, with the conditions that it not be developable unless merged with the Trust Property and that a 20’ easement be retained over the entire Vacation Area for sanitary sewer and utilities.

NOW, THEREFORE, in accordance with Chapter 34, Article V of the Hampton City Code, the City of Hampton, Virginia, acting by and through its City Council at its duly held meeting on the 8th day of July, 2015, does by these presents release, quit-claim, and vacate unto Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust dated January 16, 1991, the following described property, to-wit:

All that certain lot, piece, or parcel of land containing 3,797 square feet (0.087 acre), more or less, situate, lying, and being in the City of Hampton, Virginia, and being designated as "BOXWOOD POINT RD." as shown on that certain exhibit entitled: "EXHIBIT SHOWING VACATION OF A PORTION OF BOXWOOD POINT RD FROM: CITY OF HAMPTON, VA TO: ANNIE K. STARNES REVOCABLE TRUST," said exhibit bearing a date of March 23, 2015 and prepared by the City of Hampton, Department of Public Works, Engineering Services, which is attached hereto as Exhibit "A" for reference and made a part of this legal description.

IN WITNESS WHEREOF, the City of Hampton, Virginia, a municipal corporation, has caused its name to be signed hereto by its City Manager or her duly Authorized Designee, and its corporate seal to be affixed and attested by its Clerk, Katherine K. Glass, they having been duly authorized to do so; and Annie K. Starnes, Trustee of the Annie K. Starnes Revocable Trust likewise has caused her name to be signed hereto.

THE CITY OF HAMPTON, VIRGINIA

By: _____
City Manager / Authorized Designee

ATTEST:

Clerk

Approved as to form and legal sufficiency:



Deputy City Attorney

ACCEPTANCE:

ANNIE K. STARNES REVOCABLE
TRUST, DATED JANUARY 16, 1991

By: Annie K. Starnes
Annie K. Starnes, Trustee

COMMONWEALTH OF VIRGINIA
City of Hampton, to-wit:

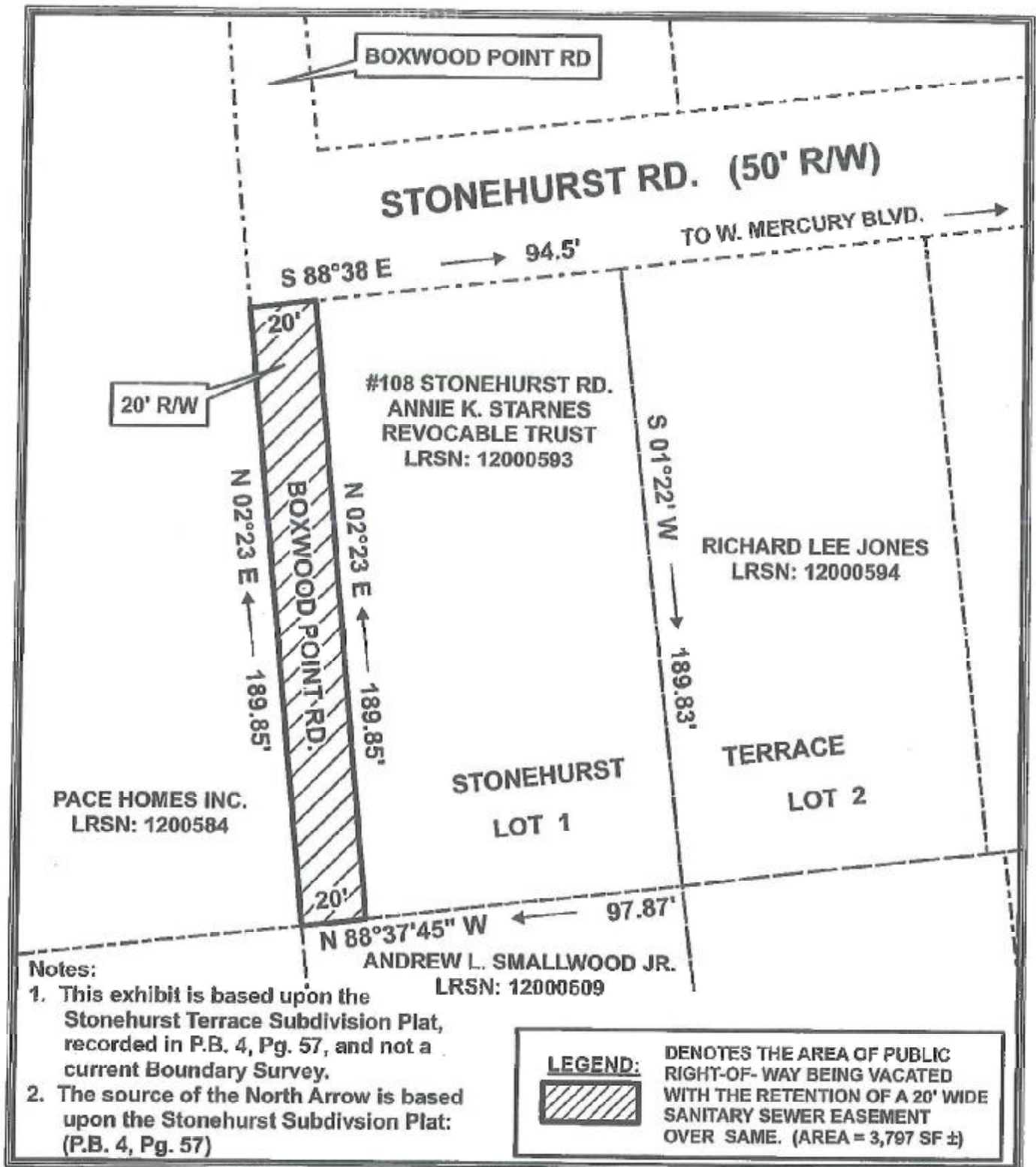
I hereby certify on this 9th day of June, 2015 that the foregoing
Vacation Agreement was acknowledged before me by Annie K. Starnes, Trustee, Annie
K. Starnes Revocable Trust, Dated January 16, 1991. She is known to me personally or
provided VA DL as identification.

Nakisha Jones
Notary Public

My commission expires: 9/30/2018
Registration No. 7622916



EXHIBIT "A"



**Exhibit Showing Vacation of a Portion of
Boxwood Point Rd**

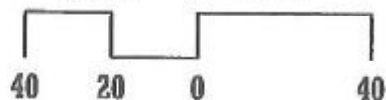
From: City of Hampton, VA

To: Annie K. Starnes Revocable Trust

Prepared by: CITY of HAMPTON

Dept. of Public Works - Engineering Services

Scale: 1" = 40'



Map printed: 23 March, 2015



HAMPTON VA



City of Hampton, VA

Agenda Review

File Number: 15-0216

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0216**

Request Number: **R-2015-00209**

File Type: **Resolution**

Department: **City Attorney**

Introduced: **7/8/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **Received By Clerk's Office**

Created By: **Lendora Dale**

Phone:

Requestor:

Phone:

Presenter: **James Pete Peterson, Assistant City Manager**

Phone: **727-6392**

Title: **Resolution Authorizing the Transfer from the City of Hampton to the Hampton Redevelopment and Housing Authority One Vacant Parcel in the Downtown Area, known as 32 E. Queens Way, LRSN: 2002883.**

Action Requested: **(1) Conduct a Public Hearing (2) Approve the Resolution**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date

Acting Body

Action

6/23/2015

Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The City Council adopted a resolution wherein the Hampton Redevelopment and Housing Authority (HRHA) was designated as the agency to implement the City's Comprehensive plan as it relates to residential development and redevelopment with a residential component. In the past and consistent with this policy, the City conveyed the Goodyear site in downtown Hampton to the HRHA.

The City originally acquired 32 E. Queens Way to assist in the assemblage of properties surrounding the Goodyear site. Assemblage of these properties would facilitate marketability of the site for redevelopment. The City now desires to transfer the property to the HRHA for redevelopment in accordance with the City's Comprehensive Plan.

While the Goodyear site and 32 E. Queens Way are to be continued to be marketed for redevelopment, the City Council is amenable to the two sites being used for other public purposes in the interim. To that end, the City staff recommends the transfer of the lot to the HRHA be subject to the conditions that the HRHA: (i) enter into a Master Lease for the Goodyear site and 32 E. Queens Way with the Downtown Hampton Development Partnership (DHDP) for the purpose of hosting or facilitating festival events that are conducive to tourism, arts, culture and multicultural, multi-generational entertainment; (ii) continue to market the two sites for redevelopment; (iii) consult with the City before any unsolicited proposal for the lots is accepted, or an RFP or RFQ is issued or the lots are sold, and (iv) pay over to the City the net proceeds from the sale of the lots without further notice or demand.

The disposition of the property was advertised in accordance with Virginia Code §15.2-1813.

LEGISLATION TEXT:

RESOLUTION

WHEREAS, the City of Hampton ("City") owns a vacant parcel of land known as 32 E. Queens Way, LRSN: 2002883, in the Downtown area of the City of Hampton, Virginia;

WHEREAS, the City Council has designated the Hampton Redevelopment and Housing Authority ("HRHA") as the agency to implement the City's Comprehensive Plan as it relates to residential development and redevelopment with a residential component, and in the past and consistent with this policy, the City conveyed the Goodyear site in Downtown Hampton to the HRHA;

WHEREAS, the City originally acquired 32 E. Queens Way to assist in the assemblage of properties surrounding the Goodyear site with the purpose of facilitating the marketability of the site for redevelopment;

WHEREAS, while the Goodyear site and 32 E. Queens Way are to be continued to be marketed for redevelopment, the City Council is amenable to the two sites being used for other public purposes in the interim;

WHEREAS, to that end, the City desires to transfer title to 32 E. Queens Way to the HRHA for redevelopment in accordance with the City's Comprehensive Plan and the additional conditions that the HRHA: (i) enter into a Master Lease for the Goodyear site and 32 E. Queens Way with the Downtown Hampton Development Partnership ("DHDP") for the purpose of hosting or facilitating festival events that are conducive to tourism, arts, culture and multicultural, multi-generational entertainment; (ii) continue to market the two sites for redevelopment; (iii) consult with the City before any unsolicited proposal for the lots is accepted, or an RFP or RFQ is issued or the lots are sold, and (iv) pay over to the City the net proceeds from the sale of the lots without further notice or demand.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Hampton, Virginia, as follows:

1. That it approves the transfer to the HRHA of 32 E. Queens Way, LRSN: 2002883, located in the City of Hampton in the Downtown area for redevelopment in accordance with the City's Comprehensive Plan and the additional conditions that the HRHA: (i) enter into a Master Lease for the Goodyear site and 32 E. Queens Way

with the Downtown Hampton Development Partnership ("DHDP") for the purpose of hosting or facilitating festival events that are conducive to tourism, arts, culture and multicultural, multi-generational entertainment; (ii) continue to market the two sites for redevelopment; and (iii) pay over to the City the net proceeds from the sale of the lots without further notice or demand;

2. That the City Manager or her authorized designee and the Clerk be and are authorized to execute and deliver to the HRHA any and all necessary legal documents to effectuate the transfer; such documents shall include, but not be limited to, contracts, deeds, releases for sale, transfer, and conveyance of the parcel generally described above in the Downtown area of the City of Hampton, Virginia; and

3. That a copy of this Resolution be attached to the deed of conveyance of the above described parcel.



City of Hampton, VA

Agenda Review

File Number: 15-0208

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

File Number: **15-0208**

Request Number: **R-2015-00170**

File Type: **Appointment**

Department: **Clerk of Council**

Introduced: **6/10/2015**

Date of Final Action:

Enactment Number:

Effective:

Status: **No Action Required**

Created By: **Joy Mautz**

Phone:

Requestor: **Joy Mautz**

Phone: **757-727-6315**

Presenter: **N/A**

Phone:

Title: **to consider appointments to the Hampton Redevelopment & Housing Authority Citizen Board**

Action Requested: **to dicuss in the afternoon, appoint in the evening**

Estimated Time: **10 minutes**

Indicators:

Advertised:

Fiscal Notes:

Attachments:

Date	Acting Body	Action
6/10/2015	Evening Session	Deferred (7/8/2015)
	Ayes: 7 - Linda Curtis, W. H. "Billy" Hobbs, Jr., Will Moffett, Teresa V. Schmidt, Chris Snead, Donnie R. Tuck, George E. Wallace	
	Nays: 0	
	Abstain: 0	
	Out: 0	
6/10/2015	Afternoon Session	No Action Required
6/4/2015		Received By Clerk's Office

BRIEF BACKGROUND STATEMENT:

The first full terms of Walt Credle and Steve Brown will conclude on June 30, 2015. They are both eligible for reappointment to a second term which will expire on June 30, 2019.

There are individuals in the Board Bank who have expressed a desire to serve on this board. Those applications are being provided to Council.

